Federal Register

12–26–01 Wednesday
Vol. 66 No. 247 Dec. 26, 2001

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(ISSN 0097-6326)

Federal Register

12–26–01 Wednesday
Vol. 66 No. 247 Dec. 26, 2001
Pages 66293–66704

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AB71

Treasury Rate Direct Loan Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: In fiscal year 2001, Congress provided funding to establish a Treasury rate direct loan program to address the backlog of qualified loan applications for insured municipal rate electric loans from RUS. RUS administered the Treasury rate loan program in a manner substantially the same as it administered the municipal rate program under a Notice of Funding Availability (NOFA) published in the **Federal Register** at 65 FR 80830 on December 22, 2000. Title III of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 authorizes a direct Treasury rate electric loan program of $750 million for FY 2002. RUS is amending its regulations to establish rules and regulations to administer the Treasury rate direct loan program.

DATES: This rule is effective February 11, 2002 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before January 25, 2002. If we receive such comments or notice, we will publish a timely document in the **Federal Register** withdrawing the direct final rule. Comments received will be considered under the proposed rule published in this edition of the **Federal Register** in the proposed rule section. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1522, Washington, DC 20250–1522. RUS suggests a signed original and three copies of all comments (7 CFR 1700.4). All comments received will be made available for public inspection at room 4030, South Building, Washington, DC, between 8 a.m. and 4 p.m. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Robert O. Ellinger, Chief, Policy Analysis and Loan Management Staff, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, Room 4041 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250–1560, Telephone: (202) 720–0424, FAX (202) 690–0717, E-mail: *rellinge@rus.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. sec. 6912(e)) administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The RUS electric program provides loans and loan guarantees to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this rule are currently approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under control number 0572–0032.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled "Department Programs

and Activities Excluded From Executive Order 12372," (50 FR 47034) advising that RUS loans and loan guarantees are not covered by Executive Order 12372.

Background

Title III of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106–387) authorized a direct Treasury rate electric loan program of $500 million for FY 2001. On December 22, 2000, a Notice of Funding Availability (NOFA) was published in the **Federal Register** at 65 FR 80830 announcing the availability of $500 million in direct Treasury rate electric loans for fiscal year (FY) 2001. The document described the eligibility and submission requirements, the criteria to be used by the RUS to select applications for funding, and the expectation that the current backlog of qualifying applications for loans from RUS under the Rural Electrification Act would exhaust all of the available funding.

With the primary distinction between the established municipal rate electric loan program and the Treasury rate electric loan program merely one of interest setting methodologies, qualifying applications for municipal rate electric loans which were submitted to RUS in accordance with 7 CFR part 1710, subpart I, before October 28, 2000, were treated as pre-applications for Treasury rate electric loans. RUS contacted qualified applicants in the order which they were queued, and offered the applicant the opportunity to elect to receive its loan at the Treasury rate in lieu of the municipal rate. RUS administered the direct Treasury rate program during FY 2001 in a manner substantially the same as it administered the municipal rate program.

General, pre-loan, and post-loan policies and procedures for electric loans made by RUS may be found in 7 CFR parts 1710, 1714, and 1717. It is expected that the continued use of established and highly effective electric loan program procedures will enable RUS to continue to make prudent loans to qualified applicants. These procedures are familiar to both RUS staff and to the applicants and worked well for the Treasury rate loan program. Continuing this approach helps assure that the funds authorized by Congress are expended in a timely and efficient manner as Congress intended. RUS considered using another NOFA for FY 2002 but has decided that the continuation of this program for the second year makes rulemaking appropriate at this time.

Section 4 of the Rural Electrification Act of 1936 (RE Act) (7 U.S.C. 904), among other things, provides RUS with the authority to make loans for rural electrification and for the purpose of furnishing and improving electric service in rural areas. Title III of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (Pub. L. 107–76) authorizes a direct Treasury rate electric loan program of $750 million for FY 2002. Congress provided funding for continuation of the Treasury rate direct loan program in an effort to meet current and projected demand for capital to furnish and improve electric service in rural areas. RUS is amending its regulations to establish rules and regulations for use in administering the Treasury rate direct loan program.

List of Subjects in 7 CFR Part 1710

Electric power, Electric utilities, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, RUS amends 7 CFR Chapter XVII as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES

1. The authority citation for this part 1710 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

2. The subject heading for part 1710 is revised to read as set out above.

Subpart B—Types of Loans and Loan Guarantees

3. Redesignate § 1710.51 as § 1710.52 and add a new § 1710.51 to read as follows:

§ 1710.51 Direct loans.

RUS makes direct loans under section 4 of the RE Act.

(a) *General.* Except as otherwise modified by this section, RUS will make loans under the direct Treasury rate loan program in the same manner that it makes loans under the municipal rate program. The general and pre-loan policies and procedures for municipal rate electric loans made by RUS may be found in this part and 7 CFR part 1714. Treasury rate electric loans are also governed by such municipal rate policies and procedures, except as follows:

(1) *Interest rates.* The standard interest rate on direct Treasury rate loans will be established daily by the United States Treasury. The borrower will select interest rate terms for each advance of funds. The minimum interest rate term shall be one year. Interest rate terms will be limited to terms published by the Treasury (i.e. 1, 2, 3, 5, 7, 10, 20, and 30). Interest rate terms to final maturity date, if other than published by Treasury, will be determined by RUS. Interest rates for terms greater than 30 years will be at the 30-year rate. There will be no interest rate cap on Treasury rate loans.

(2) *Prepayment.* A Treasury rate direct electric loan may be repaid at par on its rollover maturity date if there is one. Such a loan, or portion thereof, may also be prepaid after it has been advanced for not less than two years, at any time prior to its rollover or final maturity date at its "net present value" (NPV) as determined by RUS.

(3) *Supplemental financing.* Supplemental financing will not be required in connection with Treasury rate direct electric loans.

(4) *Transitional assistance.* A Treasury rate direct loan is not available to provide transitional assistance to borrowers.

(b) *Loan documents.* Successful applicants will be required to execute and deliver to RUS a promissory note evidencing the borrower's obligation to repay the loan. The note must be in form and substance satisfactory to RUS. RUS will require a form of note substantially in the form that it currently accepts for direct municipal rate electric loans, with such revisions as may be necessary or appropriate to reflect the different interest setting provisions and the terms of paragraphs (a) (1) and (2) of this section. All notes will be secured in accordance with the terms of 7 CFR part 1718.

Subpart C—Loan Proposes and Basic Policies

4. In § 1710.102, redesignate paragraphs (b) and (c) as (c) and (d) and add a new paragraph (b) to read as follows:

§ 1710.102 Borrower eligibility for different types of loans.

* * * * *

(b) *Direct loans under section 4.* Direct loans are normally reserved for the financing of distribution and subtransmission facilities of both distribution and power supply borrowers, including, under certain circumstances, the implementation of demand side management, energy conservation programs, and on grid and off grid renewable energy systems.

* * * * *

Subpart I—Application Requirements and Procedures for Loans

5. The heading for Subpart I is revised to read as set out above.

6. Revise § 1710.401(a)(2)(i) to read as follows:

§ 1710.401 Loan application documents.

(a) * * *

(2) * * *

(i) The requested loan type, loan amount, loan term, final maturity and method of amortization (§ 1710.110(b)); * * * * *

Dated: December 18, 2001.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 01–31574 Filed 12–21–01; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–1119]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation C (Home Mortgage Disclosure). The Board is required to adjust annually the asset-size exemption threshold for depository institutions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers. The present adjustment reflects changes for the twelve–month period ending in November 2001. During this period, the index increased by 2.91 percent; as a result, the exemption threshold is increased to $32 million. Thus, depository institutions with assets of $32 million or less as of December 31, 2001, are exempt from data collection in 2002.

DATES: Effective January 1, 2002. This rule applies to all data collection in 2002.

FOR FURTHER INFORMATION CONTACT: Dan S. Sokolov, Attorney, Division of Consumer and Community Affairs, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) only, contact(202) 263–4869.

SUPPLEMENTARY INFORMATION: The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801 *et seq.*) requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must file reports with their federal supervisory agencies and make disclosures available to the public. The Board's Regulation C (12 CFR part 203) implements HMDA.

Provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (codified at 12 U.S.C. 2808(b)) amended HMDA to expand the exemption for small depository institutions. Prior to 1997, HMDA exempted depository institutions with assets totaling $10 million or less, as of the preceding year end. The statutory amendment increased the asset-size exemption threshold by requiring a one time adjustment of the $10 million figure based on the percentage by which the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW) for 1996 exceeded the CPIW for 1975, and provided for annual adjustments thereafter based on the annual percentage increase in the CPIW. The one–time adjustment increased the exemption threshold to $28 million for 1997 data collection.

Section 203.3(a)(1)(ii) of Regulation C provides that the Board will adjust the threshold based on the year–to–year change in the average of the CPIW, not seasonally adjusted, for each twelve–month period ending in November, rounded to the nearest million. Pursuant to this section, the Board raised the threshold to $29 million for 1998 data collection, raised it to $30 million for 1999 data collection, and kept it at that level for data collection in 2000. The Board raised the threshold to $31 million for data collection in 2001.

During the period ending November 2001, the CPIW increased by 2.91 percent. As a result, the exemption threshold is increased to $32 million. Thus, depository institutions with assets of $32 million or less as of December 31, 2001, are exempt from data collection in 2002. An institution's exemption from collecting data in 2002 does not affect its responsibility to report the data it was required to collect in 2001.

The Board is amending comment 3(a)–2 of the staff commentary to implement the increase in the exemption threshold. Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board finds that notice and public comment are unnecessary or would be contrary to the public interest. 5 U.S.C. 553(b)(B). Regulation C establishes the formula for determining adjustments to the exemption threshold, if any, and the amendment to the staff commentary merely applies the formula. This amendment is technical and not subject to interpretation. For these reasons, the Board has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary and would be contrary to the public interest. Therefore, the amendment is adopted in final form.

List of Subjects in 12 CFR Part 203

Banks, Banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203–HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. In Supplement I to part 203, under Section 203.3–Exempt Institutions, under 3(a) *Exemption based on location, asset size, or number of home–purchase loans*, paragraph 2 is revised to read as follows:

SUPPLEMENT I to PART 203–STAFF COMMENTARY

* * * * *

Section 203.3 Exempt Institutions

3(a) *Exemption based on location, asset size, or number of home-purchase loans.*

* * * * *

2. *Adjustment of exemption threshold for depository institutions.* For data collection in 2002, the asset–size exemption threshold is $32 million. Depository institutions with assets at or below $32 million are exempt from collecting data for 2002.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, December 18, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–31563 Filed 12–21–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–38–AD; Amendment 39–12529; AD 2001–24–12]

RIN 2120–AA64

Airworthiness Directives: Rolls-Royce Corporation (formerly Allison Engine Company) 250–C20 Series Turboshaft and 250–B17 Series Turboprop Engines, Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2001–24–12 applicable to Rolls-Royce Corporation (formerly Allison Engine Company) 250–C20 series turboshaft and 250–B17 series turboprop engines, that was published in the **Federal Register** on December 4, 2001 (66 FR 62915). The AD number being superseded was inadvertently omitted under the PART 39—AIRWORTHINESS DIRECTIVES amendatory instruction 2 in the heading of the AD. This document corrects that omission. In all other respects, the original document remains the same.

EFFECTIVE DATE: December 19, 2001.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–8180, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A final rule; request for comments airworthiness directive applicable to Rolls-Royce Corporation (formerly Allison Engine Company) 250–C20 series turboshaft and 250–B17 series turboprop engines was published in the **Federal Register** on December 4, 2001 (66 FR 62915). The following correction is needed:

§ 39.13 [Corrected]

On page 62916, in the first column, under PART 39—AIRWORTHINESS DIRECTIVES, amendatory instruction 2, the heading of the AD is corrected to read as follows:

2001–24–12 Rolls-Royce Corporation (formerly Allison Engine Company): Amendment 39–12529. Docket No. 2001-NE–38-AD. Supersedes AD 2001–20–51.

Issued in Burlington, Massachusetts, on December 14, 2001.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–31327 Filed 12–21–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–283–AD; Amendment 39–12568; AD 2001–26–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes that have been converted from a passenger-to a cargo-carrying ("freighter") configuration, that requires, among other actions, modification of the main deck cargo door structure and fuselage structure; replacement of fasteners in the two door-side hinge elements; modification of the main deck cargo floor; and installation of a main deck cargo 9g crash barrier. The actions specified by this AD are intended to prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage. These actions are intended to address the identified unsafe condition.

DATES: Effective January 30, 2002.

ADDRESSES: Information pertaining to this AD may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5320; fax (562) 627–5210.

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 certain McDonnell Douglas Model DC–8 series airplanes that have been converted from a passenger-to a cargo-carrying ("freighter") configuration was published in the **Federal Register** on September 27, 2000 (65 FR 58203). That action proposed to require, among other actions, modification of the main deck cargo door structure and fuselage structure; replacement of fasteners in the two door-side hinge elements; modification of the main deck cargo floor; and installation of a main deck cargo 9g crash barrier.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Revise Compliance Times

One commenter requests that the compliance times specified in paragraph (b) of the proposed AD be revised from "Within 2 years or 2,000 flight cycles after the effective date of this AD, whichever occurs first" to "within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first." The commenter contends that if the inspection and evaluation required by that paragraph reveals a discrepancy, the corrective modification will be extensive. The commenter states that such an extension would allow operators to correct discrepancies at one maintenance visit, and thus, minimize airplane downtime.

The FAA agrees. Since issuance of the NPRM, we have gained a better understanding of the design feature of the original modification relative to the vertical side restraint installation and decompression venting. We have determined that the structure is sufficiently robust, and that accomplishing the required inspection, evaluation, and modification, if necessary, required by paragraph (b) of this AD "within 3 years or 4,000 flight hours after the effective date of this AD, whichever occurs first," will provide an acceptable level of safety. For the same reasons, we also find that the 2-year compliance time for the modification required by paragraph (e) of this AD can be extended to "within 3 years or 4,000 flight hours after the effective date of this AD, whichever occurs first." Therefore, we have revised the compliance times of paragraphs (b) and (e) of the final rule accordingly.

The same commenter requests that the compliance time specified in paragraph (f)(2) of the proposed AD be revised from "Within 2 years or 2,000 flight

hours after the effective date of this AD, whichever occurs first" to "within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first." The commenter states that postponing the replacement for another year will not adversely affect safety, because incorporating inspections into the operator's FAA-approved maintenance or inspection program within 1 year, as required by paragraph (a)(1) of the proposed AD, will provide an acceptable level of safety. The commenter also states that a 3-year compliance time would allow it to perform the proposed replacement concurrently with the major rework on the door structure, and thus, reduce airplane downtime.

Based on the commenter's reasons, the FAA agrees to extend the compliance time for the replacement required by paragraph (f)(2) of this AD. Extending the compliance time to "within 3 years or 4,000 flight cycles" will not adversely affect safety and will allow the replacement to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. We have revised paragraph (f)(2) of the final rule to specify a compliance time of "within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first." It should be noted that we inadvertently used "flight hours" instead of "flight cycles" in paragraphs (f)(1) and (f)(2) of the NPRM. Therefore, we have revised that term to read "flight cycles" in paragraphs (f)(1) and (f)(2) of the final rule, as was used in other paragraphs of the NPRM.

Request To Provide an Alternate Means of Compliance

The commenter also requests that paragraph (a)(2)(i) of the proposed AD be revised to include an option that states: "Main deck zone loading can be limited as approved by manager LA ACO in such a manner that no modification is required for the main deck floor structure. This will eliminate the requirement for Alternate Means of Compliance." The commenter notes that under the heading "3. Capability of the Unmodified Floor" in the preamble of the proposed AD, it states "It is also possible to limit the main deck zone loading to a level that the main deck cargo floor can be supported safely without modification." The commenter states that the analysis performed by the DC–8 Cargo Conversion Joint Task Force and FAA has shown that the main deck floor modified per Supplemental Type Certificate (STC) SA1802SO or SA421NW is capable of carrying the zone loads equivalent to Aeronavali modified airplanes.

The FAA consulted with the commenter to clarify its reference to paragraph (a)(2)(i) of the proposed AD. The commenter meant to refer to paragraph (c) of the proposed AD. We do not agree with the commenter's request to revise paragraph (c) of the final rule. We find that the option suggested by the commenter would require operators to obtain a separate approval from the Manager of the Los Angeles Aircraft Certification Office (ACO). Adding the commenter's statement in the AD would not save us or the operators any resources, because, like the requirements of paragraph (c) of this AD, it also would require operators to submit a letter and substantiating data to us for review. The difference between the two letters would be in name only (i.e., alternate method of compliance vs. approved method of compliance). Therefore, no change to paragraph (c) of the final rule is necessary.

Approval of Supplemental Type Certificate (STC)

Since issuance of the NPRM, the FAA has reviewed and approved STC ST01181LA (held by Structural Integrity Engineering (SIE)). We find that this STC provides an acceptable means of compliance with the requirements of paragraphs (a) through (g) of this AD. Therefore, we have revised the final rule to include a new Note 2 to reference the applicable STC as a source of service information for accomplishing the requirements of paragraphs (a) through (g) of this AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 32 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 29 airplanes of U.S. registry would be affected by this proposed AD. The following table shows the estimated cost impact for airplanes affected by this AD. The average labor rate is $60 per work hour. The estimated maximum total cost for all airplanes affected by this proposed AD is $6,718,140, or $231,660 per airplane.

Action	Work hours (estimated)	Parts cost (estimated)	Total cost (estimated)
Incorporation of inspections into maintenance or inspection program.	8	N/A	$13,920, or $480 per airplane.
Modification of main deck cargo door structure and fuselage structure.	1,420	$6,500	$2,659,300, or $91,700 per airplane.
Inspection of exposed surfaces of main deck cargo door hinge.	16	N/A	$27,840, or $960 per airplane.
Replacement of the existing fasteners in the two door-side hinge elements.	60	$100	$107,300, or $3,700 per airplane.
Inspection and evaluation of the cargo handling system.	16	N/A	$27,840, or $960 per airplane.
Modification of main deck cargo floor	40	$500	$84,100, or $2,900 per airplane.
Inspection and evaluation of the venting system	16	N/A	$27,840, or $960 per airplane.
Installation of main deck cargo 9g crash barrier	1,500	$40,000	$3,770,000, or $130,000 per airplane.

The cost impact figures discussed above are 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. The cost impact figures discussed in AD rulemaking actions represent only the time

necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations 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 and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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:

2001–26–04 McDonnell Douglas: Amendment 39–12568. Docket 2000–NM–283–AD.

Applicability: Model DC–8 series airplanes that have been converted from a passenger-to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type Certificate (STC) SA1802SO or SA421NW; 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 (h) 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.

Note 2: Installation of Structural Integrity Engineering (SIE) STC ST01181LA, is an approved means of compliance with the requirements of paragraphs (a) through (g) of this AD.

To prevent opening of the cargo door while the airplane is in flight or collapse of the main deck cargo floor, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage, accomplish the following:

Actions Addressing the Main Deck Cargo Door and Associated Fuselage Structure

(a) Accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

(1) Within 1 year or 1,200 flight cycles after the effective date of this AD, whichever occurs first, incorporate inspections into the operator's FAA-approved maintenance or inspection program that ensure the continued operational safety of the airplane. These inspections should be based on a damage tolerance assessment that identifies any principal structural element (PSE) associated with the STC modification and should include associated inspection thresholds, inspection methods, and repetitive inspection intervals.

(2) Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish the actions specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Modify the main deck cargo door structure and fuselage structure immediately surrounding the main deck cargo door to comply with the applicable requirements of Civil Air Regulations (CAR) part 4b.

(ii) Incorporate inspections into the operator's FAA-approved maintenance or inspection program that ensure the continued operational safety of the airplane. These inspections should be based on a damage tolerance assessment that identifies any PSE associated with the STC modification required by paragraph (a)(2)(i) of this AD and should include associated inspection thresholds, inspection methods, and repetitive inspection intervals.

Actions Addressing the Main Deck Cargo Floor

(b) Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, perform an inspection and evaluation of the cargo handling system to determine if the side restraints provide the support required by the unit load devices (ULD), in accordance with a method approved by the Manager, Los Angeles ACO. If any vertical side restraint does not provide the required support, within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, modify the vertical side restraint to provide the support appropriate to the ULD's compatible with the cargo handling system, in accordance with a method approved by the Manager, Los Angeles ACO.

(c) Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, modify the main deck cargo floor to safely carry the applicable FAA-approved payload limits for above and below the main deck cargo floor. The modification and payload distribution shall be accomplished in accordance with a method approved by the Manager, Los Angeles ACO. The modification must comply with the applicable requirements of CAR part 4b for the FAA-approved payload distribution.

(d) Except for those airplanes that have been modified in accordance with paragraph (c) of this AD, within 1 year or 1,000 flight cycles after the effective date of this AD, whichever occurs first, perform an inspection and evaluation of the venting system of the main deck cargo floor to determine if the system limits decompression loads to a level that can be carried by the floor structure without failure, in accordance with a method approved by the Manager, Los Angeles ACO.

(e) If, based on the evaluation required by paragraph (d) of this AD, the venting system does not limit decompression loads to a level that can be carried by the floor structure without failure, within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, modify the venting system, as necessary, to limit the decompression loads to a level that can be supported successfully by the existing floor structure, in accordance with a method approved by the Manager, Los Angeles ACO.

Actions Addressing Main Deck Cargo Door Hinge

(f) Accomplish the actions specified in paragraphs (f)(1) and (f)(2) of this AD in accordance with a method approved by the Manager, Los Angeles ACO.

(1) Within 250 flight cycles after the effective date of this AD, perform a detailed visual inspection to detect cracks of the exposed surfaces of the main deck cargo door hinge (both fuselage and door-side hinge elements). If any crack is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO, or replace the cracked hinge element with a new, like part.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or

irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, replace the existing fasteners in the two door-side hinge elements at the forward and aft ends of the hinge with fasteners of acceptable strength.

Actions Addressing Main Deck Cargo 9g Crash Barrier

(g) Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, install a main deck cargo 9g crash barrier that complies with the applicable requirements of CAR part 4b, in accordance with a method approved by the Manager, Los Angeles ACO.

Alternative Methods of Compliance

(h) 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. 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 ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(i) 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.

Effective Date

(j) This amendment becomes effective on January 30, 2002.

Issued in Renton, Washington, on December 13, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–31553 Filed 12–21–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–282–AD; Amendment 39–12567; AD 2001–26–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration. This amendment requires, among other actions, modification of the main deck cargo door structure and fuselage structure; modification of a main deck cargo door hinge; modification of the main deck cargo floor; and installation of a main deck cargo 9g crash barrier. These actions are necessary to prevent opening of the cargo door while the airplane is in flight or collapse of the main deck cargo floor, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage. These actions are intended to address the identified unsafe condition.

DATES: Effective January 30, 2002.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5320; fax (562) 627–5210.

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 certain McDonnell Douglas Model DC–8 series airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration was published in the **Federal Register** on September 27, 2000 (65 FR 58197). That action proposed to require, among other actions, modification of the main deck cargo door structure and fuselage structure; modification of a main deck cargo door hinge; modification of the main deck cargo floor; and installation of a main deck cargo 9g crash barrier.

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. However, the FAA did receive comments in response to notice of proposed rulemaking (NPRM), Rules Docket 2000–NM–283–AD. Because certain issues raised by the commenter are generally relevant to this AD, those comments are discussed below.

Request To Revise Compliance Times

One commenter requests that the compliance times specified in paragraph (b) of the proposed be revised from "Within 2 years or 2,000 flight cycles after the effective date of this AD, whichever occurs first" to "within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first." The commenter contends that if the inspection and evaluation required by that paragraph reveals a discrepancy, the corrective modification will be extensive. The commenter states that such an extension would allow operators to correct discrepancies at one maintenance visit, and thus, minimize airplane downtime.

The FAA agrees. Since issuance of the NPRM, we have gained a better understanding of the design feature of the original modification relative to the vertical side restraint installation and decompression venting. We have determined that the structure is sufficiently robust, and that accomplishing the required inspection, evaluation, and modification, if necessary, required by paragraph (b) of this AD "within 3 years or 4,000 flight hours after the effective date of this AD, whichever occurs first," will provide an acceptable level of safety. For the same reasons, we also find that the 2-year compliance time for the modification required by paragraph (e) of this AD can be extended to "within 3 years or 4,000 flight hours after the effective date of this AD, whichever occurs first." Therefore, we have revised the compliance times of paragraphs (b) and (e) of the final rule accordingly.

Request To Provide an Alternate Means of Compliance

The commenter also requests that paragraph (a)(2)(i) of the proposed AD

be revised to include an option that states: "Main deck zone loading can be limited as approved by manager LA ACO in such a manner that no modification is required for the main deck floor structure. This will eliminate the requirement for Alternate Means of Compliance." The commenter notes that under the heading "3. Capability of the Unmodified Floor" in the preamble of the proposed AD, it states "It is also possible to limit the main deck zone loading to a level that the main deck cargo floor can be supported safely without modification." The commenter states that the analysis performed by the DC–8 Cargo Conversion Joint Task Force and FAA has shown that the main deck floor modified per Supplemental Type Certificate (STC) SA1862SO is capable of carrying the zone loads equivalent to Aeronavali modified airplanes.

The FAA consulted with the commenter to clarify its reference to paragraph (a)(2)(i) of the proposed AD. The commenter meant to refer to paragraph (c) of the proposed AD. We do not agree with the commenter's request to revise paragraph (c) of the final rule We find that the option suggested by the commenter would require operators to obtain a separate approval from the Manager of the Los Angeles Aircraft Certification Office (ACO). Adding the commenter's statement in the AD would not save us or the operators any resources, because, like the requirements of paragraph (c) of this AD, it also would require operators to submit a letter and substantiating data to us for review. The difference between the two letters would be in name only (i.e., alternate method of compliance vs. approved method of compliance). Therefore, no change to paragraph (c) of the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 6 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry will be affected by this AD. The following table shows the estimated cost impact for airplanes affected by this AD. The average labor rate is $60 per work hour. The estimated maximum total cost for all airplanes affected by this AD is $1,175,820, or $196,420 per airplane.

Action	Work hours (estimated)	Parts cost (estimated)	Total cost (estimated)
Incorporation of inspections into maintenance or inspection program.	8	N/A	$2,880 or $480 per airplane
Modification of main deck cargo door structure and fuselage structure.	225	$700	$85,200, or $14,200 per airplane.
Inspection of exposed surfaces of main deck cargo door hinge.	16	N/A	$5,760, or $960 per airplane.
Inspection of mating surfaces of main deck cargo door hinge.	16	N/A	$5,760, or $960 per airplane.
Installation of a main deck cargo door hinge	60	$200	$22,800, or $3,800 per airplane.
Inspection and evaluation of the cargo handling system	16	N/A	$5,760, or $960 per airplane.
Modification of main deck cargo floor	60	500	$24,600 or $4,100 per airplane.
Inspection and evaluation of the venting system	16	N/A	$5,760, or $960 per airplane.
Installation of main deck cargo 9g crash barrier	2,000	$50,000	$1,020,000, or $170,000 per airplane.

The cost impact figures discussed above are 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. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations 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 and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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:

2001–26–03 McDonnell Douglas: Amendment 39–12567. Docket 2000–NM–282–AD.

Applicability: Model DC–8 series airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type

Certificate (STC) SA1832SO; 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 (i) 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 opening of the cargo door while the airplane is in flight or collapse of the main deck cargo floor, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage, accomplish the following:

Actions Addressing the Main Deck Cargo Door and Associated Fuselage Structure

(a) Accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

(1) Within 1 year or 1,200 flight cycles after the effective date of this AD, whichever occurs first, incorporate inspections into the operator's FAA-approved maintenance or inspection program that ensure that continued operational safety of the airplane. These inspections should be based on a damage tolerance assessment that identifies any principal structural element (PSE) associated with the STC modification and should include associated inspection thresholds, inspection methods, and repetitive inspection intervals.

(2) Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish the actions specified in paragraphs (a)(2)(i) and (a)(2)(ii) and this AD.

(i) Modify the main deck cargo door structure and fuselage structure immediately surrounding the main deck cargo door to comply with the applicable requirements of Civil Air Regulations (CAR) part 4b.

(ii) Incorporate inspections into the operator's FAA-approved maintenance or inspection program that ensure the continued operational safety of the airplane. These inspections should be based on a damage tolerance assessment that identifies any PSE associated with the STC modification required by paragraph (a)(2)(i) of this AD and should include associated inspection thresholds, inspection methods, and repetitive inspection intervals.

Actions Addressing the Main Deck Cargo Floor

(b) Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, perform an inspection and evaluation of the cargo handling system to determine if the side restraints provide the support required by the unit load device (ULD), in accordance with a method approved by the Manager, Los Angeles ACO. If any vertical side restraint does not provide the required support, within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, modify the vertical side restraint to provide the support appropriate to the ULD's compatible with the cargo handling system, in accordance with a method approved by the Manager, Los Angeles ACO.

(c) Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, modify the main deck cargo floor to safely carry the applicable FAA-approved payload limits for above and below the main deck cargo floor. The modification and payload distribution shall be accomplished in accordance with a method approved by the Manger, Los Angeles ACO. The modification must comply with the applicable requirements of CAR part 4b for the FAA-approved payload distribution.

(d) Except for those airplanes that have been modified in accordance with paragraph (c) of this AD, within 1 year or 1,000 flight cycles after the effective date of this AD, whichever occurs first, perform an inspection and evaluation of the venting system of the main deck cargo floor to determine if the system limits decompression loads to a level that can be carried by the floor structure without failure, in accordance with a method approving by the Manager, Los Angeles ACO.

(e) If, based on the evaluation required by paragraph (d) of this AD, the venting systems does not limit decompression loads to a level that can be carried by the floor structure without failure, within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, modify the venting system, as necessary, to limit the decompression loads to a level that can be supported successfully by the existing floor structure, in accordance with a method approved by the Manger, Los Angeles ACO.

Actions Addressing Main Deck Cargo Door Hinge

(f) Within 250 flight cycles after the effective date of this AD, perform a detailed visual inspection to detect cracks of the exposed surfaces of the main deck cargo door hinge (both fuselage and door side hinge elements), in accordance with a method approved by the Manager, Los Angeles ACO. If any crack is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO, or replace the cracked hinge element with a new, like part.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(g) Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish the actions specified in paragraphs (g)(1) and (g)(2) of this AD in accordance with a method approved by the Manager, Los Angeles ACO.

(1) Perform a detailed visual inspection to detect cracks or other discrepancies (i.e., double or closely drilled holes, corrosion, chips, scratches, or gouges) of the mating surfaces of the main deck cargo door hinge, skin of the main deck cargo door, and external fuselage doubler underlying the hinge. If any discrepancy is detected, prior to further flight, repair the discrepant part.

(2) Install a main deck cargo door hinge that complies with the applicable requirements of CAR part 4b, including fail-safe requirements.

Actions Addressing Main Deck Cargo 9g Crash Barrier

(h) Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, install a main deck cargo 9g crash barrier that complies with the applicable requirements of CAR part 4b, in accordance with a method approved by the Manager, Los Angeles ACO.

Alternative Methods of Compliance

(i) 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 ACO. 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 ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(j) 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.

Effective Date

(k) This amendment becomes effective on January 30, 2002.

Issued in Renton, Washington, on December 13, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–31552 Filed 12–21–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–281–AD; Amendment 39–12566; AD 2001–26–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes that have been converted from a passenger-to a cargo-carrying ("freighter") configuration. This amendment requires, among other actions, modification of the main deck cargo door structure and fuselage structure; modification of the main deck cargo floor; and installation of a main deck cargo 9g crash barrier; as applicable. These actions are necessary to prevent opening of the cargo door while the airplane is in flight or collapse of the main deck cargo floor, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage. These actions are intended to address the identified unsafe condition.

DATES: Effective January 30, 2002.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5320; fax (562) 627–5210.

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 certain McDonnell Douglas Model DC–8 series airplanes that have been converted from a passenger-to a cargo-carrying ("freighter") configuration was published in the **Federal Register** on September 27, 2000 (65 FR 58192). That action proposed to require, among other actions, modification of the main deck cargo door structure and fuselage structure; modification of the main deck cargo floor; and installation of a main deck cargo 9g crash barrier; as applicable.

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. However, the FAA did receive comments in response to notice of proposed rulemaking (NPRM), Rules Docket 2000–NM–283–AD. Because certain issues raised by the commenter are generally relevant to this AD, those comments are discussed below.

Request To Revise Compliance Times

One commenter requests that the compliance times specified in paragraph (b) of the proposed be revised from "Within 2 years or 2,000 flight cycles after the effective date of this AD, whichever occurs first" to "within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first." The commenter contends that if the inspection and evaluation required by that paragraph reveals a discrepancy, the corrective modification will be extensive. The commenter states that such an extension would allow operators to correct discrepancies at one maintenance visit, and thus, minimize airplane downtime.

The FAA agrees. Since issuance of the NPRM, we have gained a better understanding of the design feature of the original modification relative to the vertical side restraint installation and decompression venting. We have determined that the structure is sufficiently robust, and that accomplishing the required inspection, evaluation, and modification, if necessary, required by paragraph (b) of this AD "within 3 years or 4,000 flight hours after the effective date of this AD, whichever occurs first," will provide an acceptable level of safety. For the same reasons, we also find that the 2-year compliance time for the modification required by paragraph (e) of this AD can be extended to "within 3 years or 4,000 flight hours after the effective date of this AD, whichever occurs first." Therefore, we have revised the compliance times of paragraphs (b) and (e) of the final rule accordingly.

Request To Provide an Alternate Means of Compliance

The commenter also requests that paragraph (a)(2)(i) of the proposed AD be revised to include an option that states: "Main deck zone loading can be limited as approved by manager LA ACO in such a manner that no modification is required for the main deck floor structure. This will eliminate the requirement for Alternate Means of Compliance." The commenter notes that under the heading "3. Capability of the Unmodified Floor" in the preamble of the proposed AD, it states "It is also possible to limit the main deck zone loading to a level that the main deck cargo floor can be supported safely without modification." The commenter states that the analysis performed by the DC–8 Cargo Conversion Joint Task Force and FAA has shown that the main deck floor modified per Supplemental Type Certificate (STC) SA1862SO is capable of carrying the zone loads equivalent to Aeronavali modified airplanes.

The FAA consulted with the commenter to clarify its reference to paragraph (a)(2)(i) of the proposed AD. The commenter meant to refer to paragraph (c) of the proposed AD. We do not agree with the commenter's request to revise paragraph (c) of the final rule. We find that the option suggested by the commenter would require operators to obtain a separate approval from the Manager of the Los Angeles Aircraft Certification Office (ACO). Adding the commenter's statement in the AD would not save us or the operators any resources, because, like the requirements of paragraph (c) of this AD, it also would require operators to submit a letter and substantiating data to us for review. The difference between the two letters would be in name only (i.e., alternate method of compliance vs. approved method of compliance). Therefore, no change to paragraph (c) of the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 5 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD. The following table shows the estimated cost impact for airplanes affected by this AD. The average labor rate is $60 per work hour. The estimated maximum total cost

for all airplanes affected by this AD is $442,560, or $110,640 per airplane.

STC	Action	Work Hours (estimated)	Parts Cost (estimated)	Total Cost (estimated)
SA1862SO ...	Incorporation of inspections into maintenance or inspection program.	8	N/A	$1,920 or of $480 per airplane.
SA1862SO ...	Modification of main deck cargo door structure and fuselage structure.	225	$700	$56,800, or $14,200 per airplane.
ST00309AT	Inspection and evaluation of the cargo handling system.	16	N/A	$3,840, or $960 per airplane.
ST00309AT	Modification of main deck cargo floor	60	$500	$16,400, or $4,100 per airplane.
ST00309AT	Inspection and evaluation of the venting system.	16	N/A	$3,840, or $960 per airplane.
ST00309AT	Installation of main deck cargo 9g crash barrier.	1,000	$30,000	$360,000, or $90,000 per airplane.

The cost impact figures discussed above are 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. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations 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 and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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:

2001–26–02 McDonnell Douglas: Amendment 39–12566. Docket 2000–NM–281–AD.

Applicability: Model DC–8 series airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type Certificates (STC) SA1862SO and ST00309AT; 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 (g) 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 opening of the cargo door while the airplane is in flight or collapse of the main deck cargo floor, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage, accomplish the following:

Actions Addressing the Main Deck Cargo Door and Associated Fuselage Structure

(a) For airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration in accordance with STC SA1862SO: Accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

(1) Within 1 year or 1,200 flight cycles after the effective date of this AD, whichever occurs first, incorporate inspections into the operator's FAA-approved maintenance or inspection program that ensure the continued operational safety of the airplane. These inspections should be based on a damage tolerance assessment that identifies any principal structural element (PSE) associated with the STC modification and should include associated inspection thresholds, inspection methods, and repetitive inspection intervals.

(2) Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish the actions specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Modify the main deck cargo door structure and fuselage structure immediately surrounding the main deck cargo door to comply with the applicable requirements of Civil Air Regulations (CAR) part 4b.

(ii) Incorporate inspections into the operator's FAA-approved maintenance or inspection program that ensure the continued operational safety of the airplane. These inspections should be based on a damage tolerance assessment that identifies any PSE associated with the STC modification required by paragraph (a)(2)(i) of this AD and should include associated inspection thresholds, inspection methods, and repetitive inspection intervals.

Actions Addressing the Main Deck Cargo Floor

(b) For airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration in accordance with STC ST00309AT: Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, perform an inspection and evaluation of the cargo handling system to determine if the side restraints provide the support required by the

unit load device (ULD), in accordance with a method approved by the Manager, Los Angeles ACO. If any vertical side restraint does not provide the required support, within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, modify the vertical side restraint to provide the support appropriate to the ULD's compatible with the cargo handling system, in accordance with a method approved by the Manager, Los Angeles ACO.

(c) For airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration in accordance with STC ST00309AT: Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, modify the main deck cargo floor to safely carry the applicable FAA-approved payload limits above and below the main deck cargo floor. The modification and payload distribution shall be accomplished in accordance with a method approved by the Manager, Los Angeles ACO. The modification must comply with the applicable requirements of CAR part 4b for the FAA-approved payload distribution.

(d) For airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration in accordance with STC ST00309AT, except for those airplanes that have been modified in accordance with paragraph (c) of this AD: Within 1 year or 1,000 flight cycles after the effective date of this AD, whichever occurs first, perform an inspection and evaluation of the venting system of the main deck cargo floor to determine if the system limits decompression loads to a level that can be carried by the floor structure without failure, in accordance with a method approved by the Manager, Los Angeles ACO.

(e) If, based on the evaluation required by paragraph (d) of this AD, the venting system does not limit decompression loads to a level that can be carried by the floor structure without failure, within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, modify the venting system, as necessary, to limit the decompression loads to a level that can be supported successfully by the existing floor structure, in accordance with a method approved by the Manager, Los Angeles ACO.

Actions Addressing Main Deck Cargo 9g Crash Barrier

(f) For airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration in accordance with STC ST00309AT: Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, install a main deck cargo 9g crash barrier that complies with the applicable requirements of CAR part 4b, in accordance with a method approved by the Manager, Los Angeles ACO.

Alternative Methods of Compliance

(g) 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 ACO. 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 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.

Special Flight Permit

(h) 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.

Effective Date

(i) This amendment becomes effective on January 30, 2002.

Issued in Renton, Washington, on December 13, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–31551 Filed 12–21–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–280–AD; Amendment 39–12565; AD 2001–26–01]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes that have been converted from a passenger-to a cargo-carrying ("freighter") configuration. This amendment requires, among other actions, modification of the main deck cargo door structure and fuselage structure; modification of a main deck cargo door hinge; modification of the main deck cargo floor; and installation of a main deck cargo 9g crash barrier; as applicable. The actions specified by this AD are intended to prevent opening of the cargo door while the airplane is in flight or collapse of the main deck cargo floor, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage. These actions are intended to address the identified unsafe condition.

DATES: Effective January 30, 2002.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5320; fax (562) 627–5210.

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 certain McDonnell Douglas Model DC–8 series airplanes that have been converted from a passenger-to a cargo-carrying ("freighter") configuration was published in the **Federal Register** on September 27, 2000 (65 FR 58185). That action proposed to require, among other actions, modification of the main deck cargo door structure and fuselage structure; modification of a main deck cargo door hinge; modification of the main deck cargo floor; and installation of a main deck cargo 9g crash barrier; as applicable.

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. However, the FAA did receive comments in response to notice of proposed rulemaking (NPRM), Rules Docket 2000–NM–283–AD. Because certain issues raised by the commenter are generally relevant to this AD, those comments are discussed below.

Request To Revise Compliance Times

One commenter requests that the compliance times specified in paragraph (b) of the proposed be revised from "Within 2 years or 2,000 flight cycles after the effective date of this AD, whichever occurs first" to "within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first." The commenter contends that if the inspection and evaluation required by that paragraph reveals a discrepancy, the corrective modification will be extensive. The commenter states that such an extension would allow operators to correct discrepancies at one maintenance visit, and thus, minimize airplane downtime.

The FAA agrees. Since issuance of the NPRM, we have gained a better

understanding of the design feature of the original modification relative to the vertical side restraint installation and decompression venting. We have determined that the structure is sufficiently robust, and that accomplishing the required inspection, evaluation, and modification, if necessary, required by paragraph (b) of this AD "within 3 years or 4,000 flight hours after the effective date of this AD, whichever occurs first," will provide an acceptable level of safety. For the same reasons, we also find that the 2-year compliance time for the modification required by paragraph (e) of this AD can be extended to "within 3 years or 4,000 flight hours after the effective date of this AD, whichever occurs first." Therefore, we have revised the compliance times of paragraphs (b) and (e) of the final rule accordingly.

Request To Provide an Alternate Means of Compliance

The commenter also requests that paragraph (a)(2)(i) of the proposed AD be revised to include an option that states: "Main deck zone loading can be limited as approved by manager LA ACO in such a manner that no modification is required for the main deck floor structure. This will eliminate the requirement for Alternate Means of Compliance." The commenter notes that under the heading "3. Capability of the Unmodified Floor" in the preamble of the proposed AD, it states "It is also possible to limit the main deck zone loading to a level that the main deck cargo floor can be supported safely without modification." The commenter states that the analysis performed by the DC–8 Cargo Conversion Joint Task Force and FAA has shown that the main deck floor modified per Supplemental Type Certificate (STC) SA1862SO is capable of carrying the zone loads equivalent to Aeronavali modified airplanes.

The FAA consulted with the commenter to clarify its reference to paragraph (a)(2)(i) of the proposed AD. The commenter meant to refer to paragraph (c) of the proposed AD. We do not agree with the commenter's request to revise paragraph (c) of the final rule. We find that the option suggested by the commenter would require operators to obtain a separate approval from the Manager of the Los Angeles Aircraft Certification Office (ACO). Adding the commenter's statement in the AD would not save us or the operators any resources, because, like the requirements of paragraph (c) of this AD, it also would require operators to submit a letter and substantiating data to us for review. The difference between the two letters would be in name only (i.e., alternate method of compliance vs. approved method of compliance). Therefore, no change to paragraph (c) of the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 15 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 11 airplanes of U.S. registry will be affected by this AD. The following table shows the estimated cost impact for airplanes affected by this AD. The average labor rate is $60 per work hour. The estimated maximum total cost for all airplanes affected by this AD is $2,192,520, or $199,320 per airplane.

STC	Action	Work hours (estimated)	Parts cost (estimated)	Total cost (estimated)
SA1063SO	Incorporation of inspections into maintenance or inspection program.	8	N/A	$5,280 or $480 per airplane.
SA1063SO	Modification of main deck cargo door structure and fuselage structure.	205	$700	$143,000, or $13,000 per airplane.
SA1063SO	Inspection of exposed surfaces of main deck cargo door hinge.	16	N/A	$10,560, or $960 per airplane.
SA1063SO	Inspection of mating surfaces of main deck cargo door hinge.	16	N/A	$10,560, or $960 per airplane.
SA1063SO	Installation of a main deck cargo door hinge	60	$200	$41,800, or $3,800 per airplane.
SA1377SO	Inspection and evaluation of the cargo handling system.	16	N/A	$10,560, or $960 per airplane.
SA1377SO	Modification of main deck cargo floor	120	$1,000	$90,200, or $8,200 per airplane.
SA1377SO	Inspection and evaluation of the venting system.	16	N/A	$10,560, or $960 per airplane.
SA1377SO	Installation of main deck cargo 9g crash barrier.	2,000	$50,000	$1,870,000, or $170,000 per airplane.

The cost impact figures discussed above are 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. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations 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 and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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:

2001–26–01 McDonnell Douglas: Amendment 39–12565. Docket 2000–NM–280–AD.

Applicability: Model DC–8 series airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type Certificates (STC) SA1063SO and SA1377SO; 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 (i) 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 opening of the cargo door while the airplane is in flight or collapse of the main deck cargo floor, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage, accomplish the following:

Actions Addressing the Main Deck Cargo Door and Associated Fuselage Structure

(a) For airplanes that have been converted from a passenger-to a cargo-carrying ("freighter") configuration in accordance with STC SA1063SO: Accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

(1) Within 1 year or 1,200 flight cycles after the effective date of this AD, whichever occurs first, incorporate inspections into the operator's FAA-approved maintenance or inspection program that ensure the continued operational safety of the airplane. These inspections should be based on a damage tolerance assessment that identifies any principal structural element (PSE) associated with the STC modification and should include associated inspection thresholds, inspection methods, and repetitive inspection intervals.

(2) Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish the actions specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Modify the main deck cargo door structure and fuselage structure immediately surrounding the main deck cargo door to comply with the applicable requirements of Civil Air Regulations (CAR) part 4b.

(ii) Incorporate inspections into the operator's FAA-approved maintenance or inspection program that ensure the continued operational safety of the airplane. These inspections should be based on a damage tolerance assessment that identifies any PSE associated with the STC modification required by paragraph (a)(2)(i) of this AD and should include associated inspection thresholds, inspection methods, and repetitive inspection intervals.

Actions Addressing the Main Deck Cargo Floor

(b) For airplanes that have been converted from a passenger-to a cargo-carrying ("freighter") configuration in accordance with STC SA1377SO: Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, perform an inspection and evaluation of the cargo handling system to determine if the side restraints provide the support required by the unit load device (ULD), in accordance with a method approved by the Manager, Los Angeles ACO. If any vertical side restraint does not provide the required support, within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, modify the vertical side restraint to provide the support appropriate to the ULD's compatible with the cargo handling system, in accordance with a method approved by the Manager, Los Angeles ACO.

(c) For airplanes that have been converted from a passenger-to a cargo-carrying ("freighter") configuration in accordance with STC SA1377SO: Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, modify the main deck cargo floor to safely carry the applicable FAA-approved payload limits above and below the main deck cargo floor. The modification and payload distribution shall be accomplished in accordance with a method approved by the Manager, Los Angeles ACO. The modification must comply with the applicable requirements of CAR part 4b for the FAA-approved payload distribution.

(d) For airplanes that have been converted from a passenger-to a cargo-carrying ("freighter") configuration in accordance with STC SA1377SO, except for those airplanes that have been modified in accordance with paragraph (c) of this AD: Within 1 year or 1,000 flight cycles after the effective date of this AD, whichever occurs first, perform an inspection and evaluation of the venting system of the main deck cargo floor to determine if the system limits decompression loads to a level that can be carried by the floor structure without failure, in accordance with a method approved by the Manager, Los Angeles ACO.

(e) If, based on the evaluation required by paragraph (d) of this AD, the venting system does not limit decompression loads to a level that can be carried by the floor structure without failure, within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, modify the venting system, as necessary, to limit the decompression loads to a level that can be supported successfully by the existing floor structure, in accordance with a method approved by the Manager, Los Angeles ACO.

Actions Addressing Main Deck Cargo Door Hinge

(f) For airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration in accordance with STC SA1063SO: Within 250 flight cycles after the effective date of this AD, perform a detailed visual inspection to detect cracks of the exposed surfaces of the main deck cargo door hinge (both fuselage and door side hinge elements), in accordance with a method approved by the Manager, Los Angeles ACO. If any crack is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO, or replace the cracked hinge element with a new, like part.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.

(g) For airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration in accordance with STC SA1063SO: Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish the actions specified in paragraphs (g)(1) and (g)(2) of this AD in accordance with a method approved by the Manager, Los Angeles ACO.

(1) Perform a detailed visual inspection to detect cracks or other discrepancies (i.e., double or closely drilled holes, corrosion, chips, scratches, or gouges) of the mating surfaces of the main deck cargo door hinge, skin of the main deck cargo door, and external fuselage doubler underlying the hinge. If any discrepancy is detected, prior to further flight, repair the discrepant part.

(2) Install a main deck cargo door hinge that complies with the applicable requirements of CAR part 4b, including fail-safe requirements.

Actions Addressing Main Deck Cargo 9g Crash Barrier

(h) For airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration in accordance with STC SA1377SO: Within 3 years or 4,000 flight cycles after the effective date of this AD, whichever occurs first, install a main deck cargo 9g crash barrier that complies with the applicable requirements of CAR part 4b, in accordance with a method approved by the Manager, Los Angeles ACO.

Alternative Methods of Compliance

(i) 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 ACO, FAA. 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 ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(j) 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.

Effective Date

(k) This amendment becomes effective on January 30, 2002.

Issued in Renton, Washington, on December 13, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–31550 Filed 12–21–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8971]

RIN 1545–BA49

New Markets Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance for taxpayers claiming the new markets tax credit under section 45D. A taxpayer making a qualified equity investment in a qualified community development entity that has received a new markets tax credit allocation may claim a 5-percent tax credit with respect to the qualified equity investment on each of the first 3 credit allowance dates and a 6-percent tax credit with respect to the qualified equity investment on each of the remaining 4 credit allowance dates. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in REG–119436–01 published elsewhere in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective December 26, 2001.

Date of Applicability: For date of applicability of § 1.45D–1T, see § 1.45D–1T(h).

FOR FURTHER INFORMATION CONTACT: Paul Handleman, (202) 622–3040.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1765. Responses to these collections of information are mandatory.

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

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

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

Background

This document contains temporary regulations relating to the new markets tax credit under section 45D of the Internal Revenue Code (Code). This provision was added to the Code by section 121(a) of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554). The Secretary has delegated certain administrative, application, allocation, monitoring, and other programmatic functions relating to the new markets tax credit program to the Under Secretary (Domestic Finance), who in turn has delegated those functions to the Community Development Financial Institutions Fund (CDFI Fund).

On May 1, 2001, the IRS published an advance notice of proposed rulemaking in the **Federal Register** (66 FR 21844) inviting comments relating to tax issues arising under section 45D. Numerous comments have been received. The IRS and Treasury Department have reviewed and considered all the comments in the process of preparing this Treasury decision. This preamble to the temporary regulations describes many, but not all, of the comments received by the IRS.

Explanation of Provisions

General Overview

Taxpayers may claim a new markets tax credit on a credit allowance date in an amount equal to the applicable percentage of the taxpayer's qualified equity investment in a qualified community development entity (CDE). The credit allowance date for any qualified equity investment is the date on which the investment is initially made and each of the 6 anniversary dates thereafter. The applicable percentage is 5 percent for the first 3 credit allowance dates and 6 percent for the remaining credit allowance dates.

A CDE is any domestic corporation or partnership if: (1) The primary mission of the entity is serving or providing investment capital for low-income communities or low-income persons; (2) the entity maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity; and (3) the entity is certified by the Secretary for purposes of section 45D as being a CDE.

The new markets tax credit may be claimed only for a qualified equity investment in a CDE. A qualified equity investment is any equity investment in a CDE for which the CDE has received an allocation from the Secretary if, among other things, the CDE uses substantially all of the cash from the investment to make qualified low-income community investments. Under a safe harbor, the substantially-all requirement is treated as met if at least 85 percent of the aggregate gross assets of the CDE are invested in qualified low-income community investments.

Qualified low-income community investments consist of: (1) Any capital or equity investment in, or loan to, any qualified active low-income community business; (2) the purchase from another CDE of any loan made by such entity that is a qualified low-income community investment; (3) financial counseling and other services to businesses located in, and residents of, low-income communities; and (4) certain equity investments in, or loans to, a CDE.

In general, a qualified active low-income community business is a corporation or a partnership if for the taxable year: (1) At least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business within any low-income community; (2) a substantial portion of the use of the tangible property of the entity is within any low-income community; (3) a substantial portion of the services performed for the entity by its employees is performed in any low-income community; (4) less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity is attributable to certain collectibles; and (5) less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity is attributable to certain nonqualified financial property.

Substantially All

As indicated above, a CDE must use substantially all of the cash from a qualified equity investment to make qualified low-income community investments. Most commentators suggest that the substantially-all test should require that at least 85 percent of the taxpayer's cash be committed to, or invested in, qualified low-income community investments. Some commentators propose that in order to provide CDEs with financial flexibility in managing their investments, the percentage should be reduced for the later years of the 7-year credit period. The temporary regulations adopt the suggestion to define *substantially all* as 85 percent or more and reduce the substantially-all percentage to 75 percent for the seventh year of the 7-year credit period.

Some commentators suggest that a CDE's costs of obtaining equity investments in the CDE (such as underwriters' fees and broker fees) and the CDE's overhead expenses (such as staff salaries) should count toward satisfying the substantially-all requirement. Some commentators suggest that reserves maintained by the CDE of up to 10 percent of the taxpayer's cash investment in the CDE should count toward satisfying the substantially-all requirement. The temporary regulations do not include issuance costs or CDE overhead expenses as counting toward the substantially-all requirement. However, the temporary regulations provide that reserves (but not in excess of 5 percent of the taxpayer's cash investment) for loan losses and for additional investments in existing qualified low-income community investments are treated as invested in a qualified low-income community investment.

Several commentators suggest that, for purposes of the "85 percent of the aggregate gross assets" safe harbor, aggregate gross assets should be determined according to cost basis and not, for example, fair market value. The temporary regulations adopt this suggestion. Cost basis is defined under the temporary regulations as cost basis under section 1012.

Commentators propose that a CDE should have from 12 months to 5 years to invest the cash from a qualified equity investment in a qualified low-income community investment, depending upon the type of investment. The temporary regulations adopt a 12-month period for investing the taxpayer's cash investment.

Commentators propose that repayments to a CDE of equity or principal from qualified low-income community investments should have to be reinvested by the CDE within 12 months, but that no reinvestment should be required in the sixth and seventh years of the 7-year credit period. One commentator proposes that reinvestment should be encouraged, but not required. Another commentator would limit the time period to 45 days for identifying the investment and 180 days for making the investment. The temporary regulations adopt the suggestion that repayment amounts reinvested within 12 months are treated as continuously invested in qualified low-income community investments. In addition, repayments received in the seventh year of the 7-year credit period are not required to be reinvested.

Qualified Active Low-Income Community Businesses

As indicated above, qualified low-income community investments include any capital or equity investment in, or loan to, any qualified active low-income community business. A business is a qualified active low-income community business only if, among other things: (1) At least 50 percent of the total gross income of the business is derived from the active conduct of a qualified business within any low-income community; (2) a substantial portion of the use of the tangible property of the business is within any low-income community; and (3) a substantial portion of the services performed for the business by its employees is performed in any low-income community.

Commentators propose that, to satisfy the "50 percent of the total gross income * * * derived from the active conduct" requirement (50-percent requirement) in the case of a manufacturing business, 50 percent of production, but not sales, should have to occur within a low-income community. For a services business, commentators recommend a requirement that at least 50 percent of the services be provided by employees of offices in low-income communities even if the services are provided elsewhere. One commentator suggests that the 50-percent requirement should be deemed met if the business is located in the low-income community and most of the employees are residents of the low-income community. Another commentator suggests that the requirement should be satisfied if 50 percent of the total gross income is derived from: (1) The operation of, or production at, a facility located in a low-income community; (2) most of the employees are based at such a facility; and (3) the management is located within the low-income community.

For purposes of the tangible property and services performed requirements, recommendations for the percentage that should constitute a substantial portion range from 20 percent to 50 percent. Alternatively, some commentators propose that the tangible property and services performed requirements should be satisfied if the business satisfies one of the following: (1) The business is located in a qualified area; (2) the business operates a major facility in a qualified area; (3) the business' primary business activity takes place in a qualified area; or (4) the business' primary mission is working with people in qualified areas.

For purposes of the tangible property and services performed requirements, the temporary regulations define a substantial portion as 40 percent. In addition, the temporary regulations provide that the 50-percent requirement is deemed to be satisfied if the entity meets the requirements of either the tangible property test or the services performed test, if 50 percent is substituted for 40 percent. Further, the entity may satisfy the 50-percent requirement based on all the facts and circumstances.

Commentators propose that for purposes of determining when a trade or business constitutes a qualified active

low-income community business, an entity should qualify as a qualified active low-income community business if the CDE reasonably expects, at the time the CDE makes the capital or equity investment in, or loan to, the entity, that the entity will satisfy the requirements to be a qualified active low-income community business throughout the entire period of the investment or loan. This proposal has been adopted in the temporary regulations, except in the case where the CDE controls the entity.

If the CDE controls the entity at any time during the 7-year credit period, the reasonable expectation test does not apply and the entity must be a qualified active low-income community business during the entire period the CDE controls the entity. Commentators suggest that control for this purpose should be defined as at least 50 percent of voting power. Some commentators suggest that control should be determined based on whether the CDE is related to the entity within the meaning of sections 267(b) or 707(b)(1). The temporary regulations define control with respect to an entity as direct or indirect ownership (based on value) or control (based on voting or management rights) of 33 percent or more of the entity. However, a CDE does not control an entity if an unrelated person possesses greater control over the entity than the CDE.

Financial Counseling and Other Services

Commentators suggest that the definition of financial counseling and other services should include services for identifying CDE investment opportunities; preparing business owners to use financial products; underwriting loans and investments; helping business owners create viable business plans; and, after loans and investments are made, enhancing business planning, marketing, management, and financial skills of business owners and serving on their boards of directors. The temporary regulations define *financial counseling and other services* as advice provided by the CDE relating to the organization or operation of a trade or business that is provided to a qualified active low-income community business or to residents of a low-income community.

Investments in Other CDEs

Commentators propose that, for purposes of the substantially-all requirement, tracing should not be required when a CDE invests in another CDE, but other mechanisms should be required (for example, decertifying the recipient CDE if it does not use funds properly). Alternatively, commentators propose tracing at the recipient CDE level, but minimizing the reporting and recapture burdens for the recipient CDEs. Some commentators suggest that the recipient CDE should have the same restrictions placed on it as the investing CDE. The temporary regulations provide that an equity investment in, or loan to, another CDE is a qualified low-income community investment only to the extent that the recipient CDE uses the proceeds: (1) For either an investment in, or a loan to, a qualified active low-income community business, or financial counseling and other services; and (2) in a manner that would constitute a qualified low-income community investment if it were made directly by the CDE making the equity investment or loan.

Recapture

A recapture event requiring an investor to recapture credits previously taken may occur for an equity investment in a CDE if the CDE: (1) Ceases to be a CDE; (2) ceases to use substantially all of the proceeds of the equity investment for qualified low-income community investments; or (3) redeems the investor's equity investment. Commentators suggest that a CDE should be permitted to take remedial actions to avoid recapture. The temporary regulations adopt this suggestion by providing a CDE the opportunity to request a waiver of a requirement or an extension of time to meet a deadline contained in the temporary regulations if such waiver or extension does not materially frustrate the purposes of section 45D and the regulations thereunder. A CDE that believes it has good cause for a waiver or an extension may request relief from the Commissioner in a ruling request. In considering such a ruling request, the Commissioner may consult with the CDFI Fund in a manner consistent with section 6103. The granting of a waiver or an extension may require adjustments of the CDE's requirements under section 45D and the regulations thereunder as may be appropriate.

Other Federal Tax Benefits

The Treasury Department is authorized to prescribe regulations that limit the new markets tax credit for investments that are directly or indirectly subsidized by other Federal tax benefits (including the low-income housing tax credit under section 42 and the exclusion from gross income under section 103). Commentators suggest that a CDE should not be permitted to use the proceeds of a qualified equity investment to purchase tax-exempt bonds. However, the same commentators state that there should be no restriction on the receipt of tax-exempt bond proceeds by a qualified active low-income community business. The temporary regulations do not prohibit a CDE from purchasing tax-exempt bonds because tax-exempt financing provides a subsidy to borrowers and not bondholders. Moreover, a loan by a CDE directly to a qualified active low-income community business cannot be a tax-exempt bond because the loan is not an obligation of a state or local government. Because the rental to others of residential rental property cannot be a qualified active low-income community business, a taxpayer cannot receive the low-income housing tax credit and new markets tax credit on the same investment. Although the temporary regulations do not provide specific rules on double tax benefit issues, the IRS and the Treasury Department request additional comments on what Federal tax benefits should limit the new markets tax credit.

Reporting Requirements

The Treasury Department is authorized to prescribe regulations that impose appropriate reporting requirements for the new markets tax credit. Commentators suggest that the information reporting to the Treasury Department should be undertaken on an annual basis and that CDEs should be required to provide the following information: Financial statements, a list of investors and closing and commitment dates, a list of eligible investments, terms of investments and location of investments, information on loan loss or investments reserves, and information on financial counseling and other services.

The reporting requirements in the temporary regulations require a CDE to provide notice: (1) To any taxpayer who acquires a qualified equity investment in the CDE at its original issue that the equity investment is a qualified equity investment entitling the taxpayer to claim the new markets tax credit; and (2) in the case of a recapture event, to each holder of an equity investment, including all prior holders of that investment, that a recapture event has occurred. CDEs must comply with such reporting requirements to the Secretary as the Secretary may prescribe. Taxpayers may claim the new markets tax credit by completing Form 8874, "New Markets Credit," and by filing the form with the taxpayer's Federal income tax return.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that any burden on taxpayers is minimal. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Paul F. Handleman, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.45D–1T also issued under 26 U.S.C. 45D(i); * * *

Par. 2. Section 1.45D–1T is added to read as follows:

§ 1.45D–1T New markets tax credit.

(a) *Table of contents.* This paragraph lists the headings that appear in § 1.45D–1T.

(a) Table of contents.
(b) Allowance of credit
(1) In general.
(2) Credit allowance date.
(3) Applicable percentage.
(4) Amount paid at original issue.
(c) Qualified equity investment.
(1) In general.
(2) Equity investment.
(3) Equity investments made prior to allocation.
(i) In general.
(ii) Exception.
(iii) Initial investment date.
(4) Limitations.
(i) In general.
(ii) Allocation limitation.
(5) Substantially all.
(i) In general.
(ii) Direct-tracing calculation.
(iii) Safe harbor calculation.
(iv) Time limit for making investments.
(v) Reduced substantially-all percentage.
(6) Aggregation of equity investments.
(7) Subsequent purchasers.
(d) Qualified low-income community investments.
(1) In general.
(i) Investment in a qualified active low-income community business.
(ii) Purchase of certain loans from CDEs.
(iii) Financial counseling and other services.
(iv) Investments in other CDEs.
(2) Payments of, or for, capital, equity or principal.
(i) In general.
(ii) Subsequent reinvestments.
(iii) Special rule for loans.
(iv) Example.
(3) Special rule for reserves.
(4) Qualified active low-income community business.
(i) In general.
(A) Gross-income requirement.
(B) Use of tangible property.
(C) Services performed.
(D) Collectibles.
(E) Nonqualified financial property.
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(iii) Portions of business.
(5) Qualified business.
(i) In general.
(ii) Rental of real property.
(iii) Exclusions.
(A) Trades or businesses involving intangibles.
(B) Certain other trades or businesses.
(C) Farming.
(6) Qualifications.
(i) In general.
(ii) Control.
(A) In general.
(B) Definition of control.
(7) Financial counseling and other services.
(e) Recapture.
(1) In general.
(2) Recapture event
(3) Bankruptcy.
(4) Waiver of requirement or extension of time.
(i) In general.
(ii) Manner for requesting a waiver or extension.
(iii) Terms and conditions.
(5) Example.
(f) Basis reduction.
(1) In general.
(2) Adjustment in basis of interest in partnership or S corporation.
(g) Other rules.
(1) Anti-abuse.
(2) Reporting requirements.
(i) Notification by CDE to taxpayer.
(A) Allowance of new markets tax credit.
(B) Recapture event.
(ii) CDE reporting requirements to Secretary.
(iii) Manner of claiming new markets tax credit.
(iv) Reporting recapture tax.
(h) Effective date.

(b) *Allowance of credit*—(1) *In general.* For purposes of the general business credit under section 38, a taxpayer holding a qualified equity investment on a credit allowance date which occurs during the taxable year may claim the new markets tax credit determined under section 45D and this section for such taxable year in an amount equal to the applicable percentage of the amount paid to a qualified community development entity (CDE) for such investment at its original issue. *Qualified equity investment* is defined in paragraph (c) of this section. *Credit allowance date* is defined in paragraph (b)(2) of this section. Applicable percentage is defined in paragraph (b)(3) of this section. A *CDE* is a qualified community development entity as defined in section 45D(c). The amount paid at original issue is determined under paragraph (b)(4) of this section.

(2) *Credit allowance date.* The term *credit allowance date* means, with respect to any qualified equity investment—

(i) The date on which the investment is initially made; and

(ii) Each of the 6 anniversary dates of such date thereafter.

(3) *Applicable percentage.* The *applicable percentage* is 5 percent for the first 3 credit allowance dates and 6 percent for the other 4 credit allowance dates.

(4) *Amount paid at original issue.* The amount paid to the CDE for a qualified equity investment at its original issue consists of all amounts paid by the taxpayer to, or on behalf of, the CDE (including any underwriter's fees) to purchase the investment at its original issue.

(c) *Qualified equity investment*—(1) *In general.* The term *qualified equity investment* means any equity investment (as defined in paragraph (c)(2) of this section) in a CDE if—

(i) The investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash;

(ii) Substantially all (as defined in paragraph (c)(5) of this section) of such cash is used by the CDE to make qualified low-income community investments (as defined in paragraph (d)(1) of this section); and

(iii) The investment is designated for purposes of section 45D and this section

by the CDE on its books and records using any reasonable method.

(2) *Equity investment.* The term *equity investment* means any stock (other than nonqualified preferred stock as defined in section 351(g)(2)) in an entity that is a corporation for Federal tax purposes and any capital interest in an entity that is a partnership for Federal tax purposes. See §§ 301.7701–1 through 301.7701–3 of this chapter for rules governing when a business entity, such as a business trust or limited liability company, is classified as a corporation or a partnership for Federal tax purposes.

(3) *Equity investments made prior to allocation—(i)* In general. Except as provided in paragraph (c)(3)(ii) of this section, an equity investment in an entity is not eligible to be designated as a qualified equity investment if it is made before the entity enters into an allocation agreement with the Secretary. An *allocation agreement* is an agreement between the Secretary and a CDE relating to a new markets tax credit allocation under section 45D(f)(2).

(ii) *Exception.* Notwithstanding paragraph (c)(3)(i) of this section, an equity investment in an entity is eligible to be designated as a qualified equity investment under paragraph (c)(1)(iii) of this section if—

(A) The equity investment is made on or after April 20, 2001;

(B) The entity in which the equity investment is made is certified by the Secretary as a CDE under section 45D(c) before January 1, 2003;

(C) The entity in which the equity investment is made receives notification of the credit allocation (with the actual receipt of such credit allocation contingent upon subsequently entering into an allocation agreement) from the Secretary before January 1, 2003; and

(D) The equity investment otherwise satisfies the requirements of section 45D and this section.

(iii) *Initial investment date.* If an equity investment is designated as a qualified equity investment in accordance with paragraph (c)(3)(ii) of this section, the investment is treated as initially made on the effective date of the allocation agreement between the CDE and the Secretary.

(4) *Limitations*—(i) *In general.* The term *qualified equity investment* does not include—

(A) Any equity investment issued by a CDE more than 5 years after the date the CDE enters into an allocation agreement (as defined in paragraph (c)(3)(i) of this section) with the Secretary; and

(B) Any equity investment by a CDE in another CDE, if the CDE making the investment has received an allocation under section 45D(f)(2).

(ii) *Allocation limitation.* The maximum amount of equity investments issued by a CDE that may be designated under paragraph (c)(1)(iii) of this section by the CDE may not exceed the portion of the limitation amount allocated to the CDE by the Secretary under section 45D(f)(2).

(5) *Substantially all—(i) In general.* Except as provided in paragraph (c)(5)(v) of this section, the term *substantially all* means at least 85 percent. The substantially-all requirement must be satisfied for each annual period in the 7-year credit period using either the direct-tracing calculation under paragraph (c)(5)(ii) of this section, or the safe harbor calculation under paragraph (c)(5)(iii) of this section. The substantially-all requirement is treated as satisfied for an annual period if either the direct-tracing calculation under paragraph (c)(5)(ii) of this section, or the safe harbor calculation under paragraph (c)(5)(iii) of this section, is performed every six months and the average of the two calculations for the annual period is at least 85 percent. For purposes of this paragraph (c)(5)(i), the *7-year credit period* means the period of 7 years beginning on the date the qualified equity investment is initially made. See paragraph (c)(6) of this section for circumstances in which a CDE may treat more than one equity investment as a single qualified equity investment.

(ii) *Direct-tracing calculation.* The substantially-all requirement is satisfied if at least 85 percent of the taxpayer's investment is directly traceable to qualified low-income community investments as defined in paragraph (d)(1) of this section. The direct-tracing calculation is a fraction the numerator of which is the CDE's aggregate cost basis determined under section 1012 in all of the qualified low-income community investments that are directly traceable to the taxpayer's cash investment, and the denominator of which is the amount of the taxpayer's cash investment under paragraph (b)(4) of this section. For purposes of this paragraph (c)(5)(ii), cost basis includes the cost basis of any qualified low-income community investment that becomes worthless. See paragraph (d)(2) of this section for the treatment of amounts received by a CDE in payment of, or for, capital, equity or principal with respect to a qualified low-income community investment.

(iii) *Safe harbor calculation.* The substantially-all requirement is satisfied if at least 85 percent of the aggregate gross assets of the CDE are invested in qualified low-income community investments as defined in paragraph (d)(1) of this section. The safe harbor calculation is a fraction the numerator of which is the CDE's aggregate cost basis determined under section 1012 in all of its qualified low-income community investments, and the denominator of which is the CDE's aggregate cost basis determined under section 1012 in all of its assets. For purposes of this paragraph (c)(5)(iii), cost basis includes the cost basis of any qualified low-income community investment that becomes worthless. See paragraph (d)(2) of this section for the treatment of amounts received by a CDE in payment of, or for, capital, equity or principal with respect to a qualified low-income community investment.

(iv) *Time limit for making investments.* The taxpayer's cash investment received by a CDE is treated as invested in a qualified low-income community investment as defined in paragraph (d)(1) of this section only to the extent that the cash is so invested no later than 12 months after the date the cash is paid by the taxpayer (directly or through an underwriter) to the CDE.

(v) *Reduced substantially-all percentage.* For purposes of the substantially-all requirement (including the direct-tracing calculation under paragraph (c)(5)(ii) of this section and the safe harbor calculation under paragraph (c)(5)(iii) of this section), 85 percent is reduced to 75 percent for the seventh year of the 7-year credit period (as defined in paragraph (c)(5)(i) of this section).

(6) *Aggregation of equity investments.* A CDE may treat any qualified equity investments issued on the same day as one qualified equity investment. If a CDE aggregates equity investments under this paragraph (c)(6), the rules in this section shall be construed in a manner consistent with that treatment.

(7) *Subsequent purchasers.* A qualified equity investment includes any equity investment that would (but for paragraph (c)(1)(i) of this section) be a qualified equity investment in the hands of the taxpayer if the investment was a qualified equity investment in the hands of a prior holder.

(d) *Qualified low-income community investments*—(1) *In general.* The term qualified low-income community investment means any of the following—

(i) *Investment in a qualified active low-income community business.* Any capital or equity investment in, or loan to, any qualified active low-income community business (as defined in paragraph (d)(4) of this section).

(ii) *Purchase of certain loans from CDEs.* The purchase from another CDE (whether or not that CDE has received an allocation from the Secretary under section 45D(f)(2)) of any loan made by such entity that is a qualified low-income community investment. A loan purchased from another CDE is a qualified low-income community investment if it qualifies as such either—

(A) At the time the selling CDE made the loan; or

(B) At the time the loan is purchased from the selling CDE.

(iii) *Financial counseling and other services.* Financial counseling and other services (as defined in paragraph (d)(7) of this section) provided to any qualified active low-income community business, or to any residents of a low-income community (as defined in section 45D(e)).

(iv) *Investments in other CDEs.* Any equity investment in, or loan to, any CDE, but only to the extent that the CDE in which the equity investment or loan is made uses the proceeds of the investment or loan in a manner—

(A) That is described in paragraphs (d)(1)(i) or (iii) of this section; and

(B) That would constitute a qualified low-income community investment if it were made directly by the CDE making such equity investment or loan.

(2) *Payments of, or for, capital, equity or principal*—(i) *In general.* Except as otherwise provided in this paragraph (d)(2), amounts received by a CDE in payment of, or for, capital, equity or principal with respect to a qualified low-income community investment must be reinvested by the CDE in a qualified low-income community investment no later than 12 months from the date of receipt to be treated as continuously invested in a qualified low-income community investment. If the amounts received by the CDE are equal to or greater than the cost basis of the original qualified low-income community investment (or applicable portion thereof), and the CDE reinvests, in accordance with this paragraph (d)(2)(i), an amount at least equal to such original cost basis, then an amount equal to such original cost basis will be treated as continuously invested in a qualified low-income community investment. In addition, if the amounts received by the CDE are equal to or greater than the cost basis of the original qualified low-income community investment (or applicable portion thereof), and the CDE reinvests, in accordance with this paragraph (d)(2)(i), an amount less than such original cost basis, then only the amount so reinvested will be treated as continuously invested in a qualified low-income community investment. If the amounts received by the CDE are less than the cost basis of the original qualified low-income community investment (or applicable portion thereof), and the CDE reinvests an amount in accordance with this paragraph (d)(2)(i), then the amount treated as continuously invested in a qualified low-income community investment will equal the excess (if any) of such original cost basis over the amounts received by the CDE that are not so reinvested. Amounts received by a CDE in payment of, or for, capital, equity or principal with respect to a qualified low-income community investment during the seventh year of the 7-year credit period (as defined in paragraph (c)(5)(i) of this section) do not have to be reinvested by the CDE in a qualified low-income community investment in order to be treated as continuously invested in a qualified low-income community investment.

(ii) *Subsequent reinvestments.* In applying paragraph (d)(2)(i) of this section to subsequent reinvestments, the original cost basis is reduced by the amount (if any) by which the original cost basis exceeds the amount determined to be continuously invested in a qualified low-income community investment.

(iii) *Special rule for loans.* Periodic amounts received during a calendar year as repayment of principal on a loan that is a qualified low-income community investment are treated as continuously invested in a qualified low-income community investment if the amounts are reinvested in another qualified low-income community investment by the end of the following calendar year.

(iv) *Example.* The application of paragraphs (d)(2)(i) and (ii) of this section is illustrated by the following example:

Example. On April 1, 2003, A, B, and C each pay $100,000 to acquire a capital interest in X, a partnership. X is a CDE that has received a new markets tax credit allocation from the Secretary. X treats the 3 partnership interests as one qualified equity investment under paragraph (c)(6) of this section. In August 2003, X uses the $300,000 to make a qualified low-income community investment under paragraph (d)(1) of this section. In August 2005, the qualified low-income community investment is redeemed for $250,000. In February 2006, X reinvests $230,000 of the $250,000 in a second qualified low-income community investment and uses the remaining $20,000 for operating expenses. Under paragraph (d)(2)(i) of this section, $280,000 of the proceeds of the qualified equity investment is treated as continuously invested in a qualified low-income community investment. In December 2008, X sells the second qualified low-income community investment and receives $400,000. In March 2009, X reinvests $320,000 of the $400,000 in a third qualified low-income community investment. Under paragraphs (d)(2)(i) and (ii) of this section, $280,000 of the proceeds of the qualified equity investment is treated as continuously invested in a qualified low-income community investment ($40,000 is treated as invested in another qualified low-income community investment in March 2009).

(3) *Special rule for reserves.* Reserves (not in excess of 5 percent of the taxpayer's cash investment under paragraph (b)(4) of this section) maintained by the CDE for loan losses or for additional investments in existing qualified low-income community investments are treated as invested in a qualified low-income community investment under paragraph (d)(1) of this section.

(4) *Qualified active low-income community business*—(i) *In general.* The term *qualified active low-income community business* means, with respect to any taxable year, a corporation (including a nonprofit corporation) or a partnership, if the requirements in paragraphs (d)(4)(i)(A), (B), (C), (D), and (E) of this section are met.

(A) *Gross-income requirement.* At least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business (as defined in paragraph (d)(5) of this section) within any low-income community (as defined in section 45D(e)). An entity is deemed to satisfy this paragraph (d)(4)(i)(A) if the entity meets the requirements of either paragraph (d)(4)(i)(B) or (C) of this section, if "50 percent" is applied instead of *40 percent.* In addition, an entity may satisfy this paragraph (d)(4)(i)(A) based on all the facts and circumstances.

(B) *Use of tangible property.* At least 40 percent of the use of the tangible property of such entity (whether owned or leased) is within any low-income community. This percentage is determined based on a fraction the numerator of which is the average value of the tangible property owned or leased by the entity and used by the entity during the taxable year in a low-income community and the denominator of which is the average value of the tangible property owned or leased by the entity and used by the entity during the taxable year. Property owned by the entity is valued at its cost basis as determined under section 1012. Property leased by the entity is valued at a reasonable amount established by the entity.

(C) *Services performed.* At least 40 percent of the services performed for such entity by its employees are performed in a low-income community. This percentage is determined based on a fraction the numerator of which is the total amount paid by the entity for employee services performed in a low-income community during the taxable year and the denominator of which is the total amount paid by the entity for employee services during the taxable year.

(D) *Collectibles.* Less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of business.

(E) *Nonqualified financial property.* Less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in section 1397C(e)). Because the definition of *nonqualified financial property* in section 1397C(e) includes debt instruments with a term in excess of 18 months, banks, credit unions, and other financial institutions are generally excluded from the definition of a *qualified active low-income community business.*

(ii) *Proprietorships.* Any business carried on by an individual as a proprietor is a qualified active low-income community business if the business would meet the requirements of paragraph (d)(4)(i) of this section if the business were incorporated.

(iii) *Portions of business.* A CDE may treat any trade or business as a qualified active low-income community business if the trade or business would meet the requirements of paragraph (d)(4)(i) of this section if the trade or business were separately incorporated.

(5) *Qualified business*—(i) *In general.* Except as otherwise provided in this paragraph (d)(5), the term *qualified business* means any trade or business. There is no requirement that employees of a *qualified business* be residents of a low-income community.

(ii) *Rental of real property.* The rental to others of real property located in any low-income community (as defined in section 45D(e)) is a *qualified business* if and only if the property is not residential rental property (as defined in section 168(e)(2)(A)) and there are substantial improvements located on the real property.

(iii) *Exclusions*—(A) *Trades or businesses involving intangibles.* The term *qualified business* does not include any trade or business consisting predominantly of the development or holding of intangibles for sale or license.

(B) *Certain other trades or businesses.* The term *qualified business* does not include any trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(C) *Farming.* The term *qualified business* does not include any trade or business the principal activity of which is farming (within the meaning of section 2032A(e)(5)(A) or (B)) if, as of the close of the taxable year of the taxpayer conducting such trade or business, the sum of the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer that are used in such a trade or business, and the aggregate value of the assets leased by the taxpayer that are used in such a trade or business, exceeds $500,000. For purposes of this paragraph (d)(5)(iii)(C), two or more trades or businesses will be treated as a single trade or business under rules similar to the rules of section 52(a) and (b).

(6) *Qualifications*—(i) *In general.* Except as provided in paragraph (d)(6)(ii) of this section, an entity is treated as a qualified active low-income community business for the duration of the CDE's investment in the entity if the CDE reasonably expects, at the time the CDE makes the capital or equity investment in, or loan to, the entity, that the entity will satisfy the requirements to be a qualified active low-income community business under paragraph (d)(4)(i) of this section throughout the entire period of the investment or loan.

(ii) *Control*—(A) *In general.* If a CDE controls or obtains control of an entity at any time during the 7-year credit period (as defined in paragraph (c)(5)(i) of this section), the entity will be treated as a qualified active low-income community business only if the entity satisfies the requirements of paragraph (d)(4)(i) of this section throughout the entire period the CDE controls the entity.

(B) *Definition of control.* Generally, control means, with respect to an entity, direct or indirect ownership (based on value) or control (based on voting or management rights) of 33 percent or more of the entity. However, a CDE does not control an entity if an unrelated person possesses greater control over the entity than the CDE.

(7) *Financial counseling and other services.* The term *financial counseling and other services* means advice provided by the CDE relating to the organization or operation of a trade or business.

(e) *Recapture*—(1) *In general.* If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a CDE, there is a recapture event under paragraph (e)(2) of this section with respect to such investment, then the tax imposed by Chapter 1 of the Internal Revenue Code for the taxable year in which the recapture event occurs is increased by the credit recapture amount under section 45D(g)(2). A recapture event under paragraph (e)(2) of this section requires recapture of credits allowed to the taxpayer who purchased the equity investment from the CDE at its original issue and to all subsequent holders of that investment.

(2) *Recapture event.* There is a recapture event with respect to an equity investment in a CDE if—

(i) The entity ceases to be a CDE;

(ii) The proceeds of the investment cease to be used in a manner that satisfies the substantially-all requirement of paragraph (c)(1)(ii) of this section; or

(iii) The investment is redeemed by the CDE.

(3) *Bankruptcy.* Bankruptcy of a CDE is not a recapture event.

(4) *Waiver of requirement or extension of time*—(i) In general. The Commissioner may waive a requirement or extend a deadline if such waiver or extension does not materially frustrate the purposes of section 45D and this section.

(ii) *Manner for requesting a waiver or extension.* A CDE that believes it has good cause for a waiver or an extension may request relief from the Commissioner in a ruling request. The request should set forth all the relevant facts and include a detailed explanation describing the event or events relating to the request for a waiver or an extension. For further information on the application procedure for a ruling, see Rev. Proc. 2001–1 (2001–1 I.R.B. 1) (see § 601.601(d)(2) of this chapter).

(iii) *Terms and conditions.* The granting of a waiver or an extension to a CDE under this section may require adjustments of the CDE's requirements under section 45D and this section as may be appropriate.

(5) *Example.* The application of this paragraph (e) is illustrated by the following example:

Example. In 2003, A and B acquire separate qualified equity investments in X, a partnership. X is a CDE that has received a new markets tax credit allocation from the Secretary. X uses the proceeds of A's

qualified equity investment to make a qualified low-income community investment in Y, and X uses the proceeds of B's qualified equity investment to make a qualified low-income community investment in Z. Y and Z are not CDEs. X controls both Y and Z within the meaning of paragraph (d)(6)(ii)(B) of this section. In 2003, Y and Z are qualified active low-income community businesses. In 2007, Y, but not Z, is a qualified active low-income community business and X does not satisfy the substantially-all requirement using the safe harbor calculation under paragraph (c)(5)(iii) of this section. A's equity investment satisfies the substantially-all requirement of paragraph (c)(1)(ii) of this section using the direct-tracing calculation of paragraph (c)(5)(ii) of this section because A's equity investment is traceable to Y. However, B's equity investment fails the substantially-all requirement using the direct-tracing calculation because B's equity investment is traceable to Z. Therefore, under paragraph (e)(2)(ii) of this section, there is a recapture event for B's equity investment (but not A's equity investment).

(f) *Basis reduction*—(1) *In general.* A taxpayer's basis in a qualified equity investment is reduced by the amount of any new markets tax credit determined under paragraph (b)(1) of this section with respect to the investment. A basis reduction occurs on each credit allowance date under paragraph (b)(2) of this section. This paragraph (f) does not apply for purposes of sections 1202, 1400B, and 1400F.

(2) *Adjustment in basis of interest in partnership or S corporation.* The adjusted basis of either a partner's interest in a partnership, or stock in an S corporation, must be appropriately adjusted to take into account adjustments made under paragraph (f)(1) of this section in the basis of a qualified equity investment held by the partnership or S corporation (as the case may be).

(g) *Other rules*—(1) *Anti-abuse.* If a principal purpose of a transaction or a series of transactions is to achieve a result that is inconsistent with the purposes of section 45D and this section, the Commissioner may treat the transaction or series of transactions as causing a recapture event under paragraph (e)(2) of this section.

(2) *Reporting requirements*—(i) *Notification by CDE to taxpayer*—(A) *Allowance of new markets tax credit.* A CDE must provide notice to any taxpayer who acquires a qualified equity investment in the CDE at its original issue that the equity investment is a qualified equity investment entitling the taxpayer to claim the new markets tax credit. The notice must be provided by the CDE to the taxpayer no later than 60 days after the date the taxpayer makes the investment in the CDE. The notice must contain the amount paid to the CDE for the qualified equity investment at its original issue and the taxpayer identification number of the CDE.

(B) *Recapture event.* If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a CDE, there is a recapture event under paragraph (e)(2) of this section with respect to such investment, the CDE must provide notice to each holder, including all prior holders, of the investment that a recapture event has occurred. The notice must be provided by the CDE no later than 60 days after the date the CDE becomes aware of the recapture event.

(ii) *CDE reporting requirements to Secretary.* Each CDE must comply with such reporting requirements to the Secretary as the Secretary may prescribe.

(iii) *Manner of claiming new markets tax credit.* A taxpayer may claim the new markets tax credit for each applicable taxable year by completing Form 8874, "New Markets Credit," and by filing Form 8874 with the taxpayer's Federal income tax return.

(iv) *Reporting recapture tax.* If there is a recapture event with respect to a taxpayer's equity investment in a CDE, the taxpayer must include the credit recapture amount under section 45D(g)(2) on the line for recapture taxes on the taxpayer's Federal income tax return for the taxable year in which the recapture event under paragraph (e)(2) of this section occurs (or on the line for total tax, if there is no such line for recapture taxes) and write *NMCR* (new markets credit recapture) next to the entry space.

(h) *Effective date.* This section applies on or after December 26, 2001.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 26 U.S.C. 7805.

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

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.45D–1T	1545–1765
* * * * *	

Approved: December 17, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 01–31528 Filed 12–21–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–221–FOR]

Kentucky Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSM is approving an amendment to the Kentucky regulatory program (Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky is proposing revisions to the Kentucky Administrative Regulations (KAR) pertaining to the general requirements for performance bonds and liability insurance. Kentucky intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: December 26, 2001.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Field Office Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260–8400. Internet address: bkovacic@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

Section 503(a) of SMCRA permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of

surface coal mining and reclamation operations in accordance with the requirements of the SMCRA * * *" and "rules and regulations consistent with regulations issued by the Secretary" pursuant to the SMCRA. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the Kentucky program and previous amendments are codified at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

By letter dated May 4, 1999 (Administrative Record No. KY–1459), Kentucky submitted a proposed amendment to its program at 405 KAR 10:010 under SMCRA (30 U.S.C. 1201 *et seq.*). By letter dated August 20, 1999 (Administrative Record No. KY–1465), Kentucky advised us it revised section 2(2) of 405 KAR 10:010 by inserting references to sections 5(1)(a) and 5(1)(g) where the new bond forms are incorporated by reference. The final regulation and bond forms were otherwise unchanged. OSM did not re-open the public comment period because the revision did not constitute a substantive change to the original submission.

We announced receipt of the proposed amendment in the June 1, 1999, **Federal Register** (64 FR 29247), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on July 1, 1999. We did not receive any comments and we did not hold a public hearing because no one requested one.

III. Director's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording changes.

At section 2(2), Kentucky adds language which clarifies that for surface coal mining operations on non-Federal lands the applicant shall file the bond form designated at section 5(1)(a) and for coal mining operations on Federal lands the applicant shall file the bond form designated at section 5(1)(g). This amendment does not change the substantive meaning of the rule; rather it further clarifies the intent of the rule by defining which bond form is used for what type of land (non-Federal vs. Federal lands). We therefore find that with this change the State provision is consistent with the Federal provisions at 30 CFR 800.11(a) which requires a permit applicant to file a bond on a form prescribed and furnished by the regulatory authority. The change is therefore approved.

At section 5(1), Kentucky revises the following titles to the documents it incorporates by reference: Irrevocable Standby Letter of Credit—Form SME–72 (July 1994); Certificate of Liability Insurance—Form SME–29; Notice of Cancellation, Non-Renewal or Change of Liability Insurance—Form SME–30; and Escrow Agreement—Form SME–64, (May 1991). The incorporation by reference of these documents was previously approved by OSM on December 17, 1996, at 61 FR 66220–66225. The revisions do not alter the requirements of the previously approved provisions in the Kentucky regulations. Since these revisions are nonsubstantive, we find that they will not make the Kentucky regulations inconsistent with the Federal regulations.

Kentucky also revises the edition date to the Confirmation of Irrevocable Standby Letter of Credit—Form SME–72–A, from April 1991 to July 1994, which is incorporated by reference at section 5(1). Nothing else on the form was changed. The incorporation by reference of this form was also approved by OSM on December 17, 1996. The revision does not alter the requirements of the previously approved provision in the Kentucky regulations. Since this is a nonsubstantive change, we find that it will not make the Kentucky regulation inconsistent with the Federal regulations.

Kentucky is also incorporating by reference and revising the form: Performance Bond—Form SME–42, (June 1999). Revised form SME–42 is a standard performance bond form for Non-Federal Lands as required by KRS 350.060(11) and section 2 of this regulation. It specifies the terms and conditions of the bond, including the obligations of the principal and surety and bond release or forfeiture conditions. It identifies among other things: the permit or application number, the amount and type of bond, and the acreage and location of the bonded land. The following deletions from the original form were made: the requirement that a resident Kentucky agent countersign a surety bond executed by an out-of-State surety (KRS 304.3–250 originally required it, this section was repealed on July 15, 1998) and the requirement to enter the name of the community near the lands associated with the bond. The June 1999 edition replaces the February 1991 edition. There is no Federal counterpart to either requirement that Kentucky proposes to delete. Therefore, the deletion of both the countersignature and the name of the nearby community do not render the Kentucky program less effective than the Federal rules.

New form SME–42–F is a standard performance bond form for Federal Lands as required by KRS 350.060(11), KRS 350.064(11) and section 2 of this regulation. Pursuant to 523(c) of SMCRA, Kentucky and the Secretary of the Department of the Interior entered into a Cooperative Agreement (the "Agreement") for the regulation of surface coal mining and reclamation operations on Federal lands in Kentucky. See 63 FR 53252 (October 2, 1998). Article IX of the Agreement requires that the performance bond form for Federal lands, state on its face, that in the event the Agreement is terminated, the portion of the bond covering Federal lands shall be assigned to the United States. The Agreement also required the bond form to state that if subsequent to the forfeiture of the bond, the Agreement is terminated, any unspent or uncommitted proceeds of the bond covering the Federal lands shall be assigned and forwarded to the United States. The new form includes these requirements on the form. The new form also specifies the terms and conditions of the bond, including the obligations of the principal and surety and bond release and forfeiture conditions. It identifies, among other things, the permit or application number, the amount and type of bond and the acreage and location of the bonded land.

This form satisfies the requirements in the Agreement and is not inconsistent with the Federal rules since it implements the bonding requirements. The change is therefore approved.

At section 5(2), Kentucky provides for the inspection and reproduction of the above materials. There is no direct Federal counterpart. This amendment makes the bond form available to the public. We therefore find that with this change the State provision is not inconsistent with the Federal rules. The change is therefore approved.

IV. Summary and Disposition of Comments

Public Comments

We solicited public comments on the amendment. No comments were submitted.

Federal Agency Comments

On March 1, 2000, we asked for comments from various Federal agencies who may have an interest in the Kentucky amendment (Administrative Record No. KY–1492) according to 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA. No one responded.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written agreement from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Since none of the proposed amendment provisions relate to air or water quality, we did not ask EPA to agree on the amendment. We did ask EPA to comment but they did not respond.

V. Director's Decision

Based on the above findings, we approve the proposed amendment submitted by Kentucky on May 4, 1999, and revised on August 20, 1999.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 917, codifying decisions concerning the Kentucky program. We find that good cause exists under 5 U.S.C. 553(d)(3) of SMCRA to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of SMCRA and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of the Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Kentucky program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require that Kentucky enforce only such provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 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.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because 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 certifies 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 this 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. 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.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million. (b) Will not cause a major increase in costs or prices for consumers,

individual industries, Federal, State, or local government agencies, or geographic regions. (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 24, 2001.

Roger Calhoun,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for Part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 917.15 is amended in the table in paragraph (a) by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

(a) * * *

Original amendment submission date	Date of final publication	Citation/description
.	.	.
May 4, 1999	December 26, 2001	KAR 10:010 Sections 2(2), 5(1), 5(2) and bond forms SME–42(6/99 ed.) and SME–42–F(6/99 ed.)
.	.	.

* * * * *

[FR Doc. 01–31535 Filed 12–21–01; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[LA–55–1–7485a; FRL–7121–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Louisiana; Redesignation of Lafourche Parish Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on redesignation of Lafourche Parish from nonattainment to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based on three years of complete, quality-assured, ambient air monitoring data for the 1997 to 1999 ozone seasons that demonstrate that the ozone NAAQS has been attained in the area. On August 9, 2000 the State of Louisiana submitted a request to redesignate the ozone nonattainment area of Lafourche Parish to attainment. Under the Clean Air Act (CAA), nonattainment areas may be redesignated to attainment if sufficient data are available to warrant the redesignation and the area meets the other CAA redesignation requirements. In this action, EPA will, unless adverse or critical comment is received, approve Louisiana's request for designation of Lafourche Parish because the request meets the requirements of the CAA.

DATES: This direct final rule is effective on February 25, 2002, unless EPA receives adverse comment by January 25, 2002. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Thomas Diggs at (214) 665–7214.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" are used, we mean the EPA.

Table of Contents

I. What Action Is EPA Taking?

We have determined that the Lafourche Parish ozone nonattainment area has attained the NAAQS for ozone. EPA has evaluated the State's redesignation request for consistency with the CAA, EPA regulations and policy. EPA believes that the redesignation request and monitoring data demonstrate that this area has attained the ozone standard. In addition, EPA has determined that the redesignation request meets the requirements and policy set forth in the General Preamble and policy memorandum discussed in this document for area designations. EPA is today approving Louisiana's redesignation request for Lafourche Parish.

II. What Is the Background for This Action?

The CAA as amended in 1977 required areas that were designated

nonattainment based on failure to meet the ozone national ambient air quality standard (NAAQS) to develop State Implementation Plans (SIPs) with sufficient control measures to expeditiously attain and maintain the standard. Lafourche Parish was designated under section 107 of the 1977 CAA as nonattainment with respect to the ozone NAAQS on September 11, 1978 (40 CFR 81.319). In accordance with section 110 of the 1977 CAA, the State of Louisiana submitted an ozone SIP as required by part D on December 10, 1979. EPA fully approved this ozone SIP on October 29, 1981 (46 FR 53412).

On November 15, 1990, the CAA Amendments of 1990 were enacted, 42 U.S.C. 7401–7671q. The ozone nonattainment designation for Lafourche Parish continued by operation of law according to section 107(d)(1)(C)(i) of the CAA, as amended in 1990 (56 FR 56694). Since the State had not yet collected the required three years of ambient air quality data in Lafourche Parish necessary to petition for redesignation to attainment, the area was designated as an ozone nonattainment area and classified as an incomplete data area.

On November 18, 1994, the Louisiana Department of Environmental Quality (LDEQ) requested redesignation of Lafourche Parish to attainment of the NAAQS for ozone. The request was accompanied by ambient air monitoring data that showed no violations of the NAAQS standard of 0.12 parts per million (ppm) for a period of three years and a maintenance SIP for ozone. EPA approved the request for redesignation to attainment and maintenance SIP on August 18, 1995 (60 FR 43020), by issuing a direct final rule. However, before the redesignation was final, an ozone NAAQS violation was recorded at a Lafourche Parish ozone monitoring station. On December 5, 1997, EPA corrected the designation for Lafourche Parish to nonattainment for ozone (62 FR 64284) but left the maintenance SIP approved August 18, 1995, in place.

On August 9, 2000, LDEQ again requested redesignation of the ozone attainment status for Lafourche Parish, by submitting to EPA data for the period of January 1, 1997 through December 31, 1999, indicating the NAAQS standard for ozone had been achieved. EPA has also evaluated the ozone data for the years 2000 and 2001. No violations or the 0.12 ppm ozone standard occured in these additional years. The data satisfies the CAA requirements of no more than one exceedance per annual monitoring period. There have been no monitored ozone exceedances for Lafourche Parish since 1996. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient data are available to warrant the redesignation and the area meets the other CAA redesignation requirements.

III. Why Are We Taking This Action?

We are making a determination that the area has attained the 1-hour ozone standard and has continued to be in attainment. EPA bases this determination upon three years of complete, quality-assured ambient air monitoring data for the 1997–1999 ozone seasons that demonstrate that the ozone NAAQS has been attained in the Lafourche Parish area. EPA also determined that the area has continued to attain the standard, based on the most recent three years of data.

The 1990 Amendments revised section 107(d)(3)(E) to provide six specific requirements that an area must meet in order to be redesignated from nonattainment to attainment: (1) The area must have attained the applicable NAAQS; (2) the area must meet all applicable requirements under section 110, (3)the area must meet all applicable requirements under part D of the CAA; (4) the area must have a fully approved SIP under section 110(k) of the CAA; (5) the air quality improvement must be permanent and enforceable; and, (6) the area must have a fully approved maintenance plan pursuant to section 175A of the CAA. Section 107(d)(3)(D) allows a Governor to initiate the redesignation process for an area to apply for attainment status.

IV. What Evaluation Criteria Was Used?

The redesignation request meets the criteria as follows:

A. Attainment of the NAAQS for Ozone

Attainment of the ozone NAAQS is determined based on the expected number of exceedances in a calendar year. The method for determining attainment of the ozone NAAQS is contained in 40 CFR 50.9, and appendix H to that section. The simplest method by which expected exceedances are calculated is by averaging actual exceedances at each monitoring site over a three year period. An area is in attainment of the standard if this average results in expected exceedances for each monitoring site of 1.0 or less per calendar year. When a valid daily maximum hourly average value is not available for each required monitoring day during the year, the missing days must be accounted for when estimating exceedances for the year. Appendix H provides the formula used to calculate exceedances for each year.

The State of Louisiana's request is based on an analysis of quality-assured ozone air quality data which is relevant to the redesignation request. The data come from the State and Local Air Monitoring Station network. The requests are based on ambient air ozone monitoring data collected for 3 consecutive years from January 1, 1997, through December 31, 1999. The data clearly show an exceedance rate of less than one for all these areas.

In addition to the demonstration discussed above, EPA required completion of air network monitoring requirements set forth in 40 CFR Part 58. This included a quality assurance plan revision and a monitoring network review to determine the adequacy of the ozone monitoring network. The LDEQ fulfilled these requirements to complete documentation for the air quality demonstration. The LDEQ has also committed to continue monitoring in these areas in accordance with 40 CFR part 58.

In summary, EPA believes that the data submitted by the LDEQ provides an adequate demonstration that Lafourche Parish attained the ozone NAAQS. Moreover, the monitoring data continue to show attainment to date. If the monitoring data record a violation of the NAAQS before the direct final action is effective, the direct final approval of the redesignation will be withdrawn and a proposed disapproval substituted for the direct final approval. Please see the TSD for a detailed discussion of the monitoring data.

B. Section 110 Requirements

For purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA has reviewed the SIP to ensure that it contains all measures that were due under the CAA prior to or at the time the State submitted its redesignation request, as set forth in EPA policy. EPA interprets section 107(d)(3)(E)(v) of the CAA to mean that, for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to or at the same time as the submission of a complete redesignation request. In this case, the date of submission of a complete redesignation request is August 9, 2000. Requirements of the CAA that come due subsequently continue to be applicable to the area at later dates (see section 175A(c)) and, if redesignation of any of the areas is disapproved, the State remains obligated to fulfill those requirements. These requirements are discussed in the following EPA

documents: "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992; "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992; and "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993. These documents are available at the address above.

EPA has analyzed the Louisiana SIP and determined that it is consistent with the requirements of amended section 110(a)(2). The SIP contains enforceable emission limitations; requires monitoring, compiling, and analyzing ambient air quality data; requires preconstruction review of new major stationary sources and major modifications to existing ones; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and requires stationary source emissions monitoring and reporting.

C. Part D Requirements

Before Lafourche Parish can be redesignated to attainment, the Louisiana SIP must have fulfilled the applicable requirements of part D of the CAA. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a)(1).

Section 176(c) of the CAA requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity").

Section 176 further provides that the conformity revisions to be submitted by the States must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. The EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62118) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment, or subject to a maintenance plan approved under CAA section 175A.

Pursuant to 40 CFR 51.390 (transportation conformity) and 40 CFR 51.851 (general conformity), the State of Louisiana was required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Louisiana was required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Louisiana submitted both its transportation and general conformity rules to EPA on November 10, 1994. These were approved on December 29, 1999 (64FR72934) and March 9, 1998 (63FR11372) respectively.

The EPA published additional guidance on maintenance plans and their applicability to conformity issues in a memorandum entitled "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas," (hereinafter "limited maintenance plan memo") from Sally L. Shaver, Director, Air Quality Strategies & Standards Division, on November 16, 1994. This limited maintenance plan memo discusses maintenance requirements for certain areas petitioning for redesignation to attainment. Nonclassifiable ozone nonattainment areas with design values less than 85% of the exceedance level of the ozone standard are no longer required to project emissions over the maintenance period. Lafourche Parish has a design value less than 85% of the exceedance value of the ozone standard.

The Federal transportation conformity rule (58 FR 62188) and the Federal general conformity rule (58 FR 63214) apply to areas operating under maintenance plans. Under either rule, one means by which a maintenance area can demonstrate conformity for Federal projects is to indicate that expected emissions from planned actions are consistent with the emissions budget for the area. Based on guidance discussed in the limited maintenance plan memo, emissions inventories in areas that qualify for the limited maintenance plan approach are not required to be projected over the life of the maintenance plan. EPA feels it is unreasonable to expect that such an area as the Lafourch Parish will experience so much growth in that period that a violation of the NAAQS would occur. Emissions budgets in limited maintenance plan areas would be treated as essentially not constraining emissions growth, and would not need to be capped for the maintenance period. In these cases, Federal projects subject to conformity determinations could be considered to satisfy the "budget test" of the Federal conformity rules.

D. Fully Approved SIP

The State of Louisiana has a fully approved SIP for the Lafourche Parish.

E. Permanent and Enforceable Measures

Under the CAA, EPA approved Louisiana's SIP control strategy for the Lafourche Parish, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. Several Federal and Statewide rules are in place which have significantly improved the ambient air quality in these areas. Existing Federal programs, such as the Federal Motor Vehicle Control Program and the Reid Vapor Pressure (RVP) limit of 7.8 pounds per square inch for gasoline, will not be lifted upon redesignation. These programs will counteract emissions growth as the areas experience economic growth over the life of their maintenance plans.

The State adopted VOC reduction rules such as oil/water separation; degreasing and solvent clean-up processes; surface coating rules for large appliances, furniture, coils, paper, fabric, vinyl, cans, miscellaneous metal parts and products, and factory surface coating of flat wood paneling; solvent-using rules for graphic arts; and miscellaneous industrial source rules such as for cutback asphalt. The applicable reasonably available control technology (RACT) rules will also remain in place in Lafourche Parish. In addition, the State permits program, the PSD permits program, and the Operating Permits program will help counteract emissions growth.

The EPA finds that the combination of existing EPA-approved SIP and Federal measures ensure the permanence and enforceability of reductions in ambient ozone levels that have allowed the area to attain the NAAQS.

F. Fully Approved Maintenance Plan Under Section 175A

EPA has approved the State's minimal maintenance plan for the Lafourche

Parish (see 60 FR 43020, August 18, 1995). Thus, the Parish has a fully approved maintenance plan in accordance with section 175A of the CAA, which sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan contains contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

V. What Are the Effects of This Action?

This action determines that Lafourche Parish has attained the 1-hour ozone standard. This redesignation changes the official designation for Lafourche Parish from nonattainment to attainment for the 1-hour ozone standard. It also retains the plan for maintaining the 1-hour standard for 10 years. These plans include contingency measures to correct any future violations of the 1-hour ozone standard.

VI. Why Is This a "Final Action"?

The EPA has evaluated the State of Louisiana's redesignation request for Lafourche Parish for consistency with the CAA, EPA regulations and policy. The EPA believes that the redesignation request and monitoring data demonstrate that this area has attained the ozone standard.

The EPA is taking direct final action on redesignation of Lafourche Parish from nonattainment to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. This action will be effective February 25, 2002. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will then address all adverse public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

VII. What Administrative Requirements Apply for This Action?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies 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.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. EPA will submit 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 the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 25, 2002. 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

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 10, 2001.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

Parts 52 and 81, title 40 of the Code of Federal Regulations are 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 T—Louisiana

2. Section 52.975 is amended by revising paragraph (f) to read as follows:

§ 52.975 Redesignations and maintenance plans; ozone.

* * * * *

(f) Approval—The Louisiana Department of Environmental Quality (LDEQ) submitted minimal maintenance plans for Lafourche Parish on November 18, 1994. The LDEQ submitted a redesignation request on August 9, 2000. The maintenance plans meet the redesignation requirements in section 107(d)(3)(E) of the Act as amended in 1990. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Louisiana ozone State Implementation Plan for Lafourche Parish.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

2. In § 81.319, the table entitled "Louisiana—Ozone (1-Hour Standard)" is amended by revising the entry for Lafourche Parish to read as follows:

§ 81.319 Louisiana.

* * * * *

LOUISIANA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
. . .	.	.	.	.
Lafourche Parish	2/25/02	Attainment.		
. . .	.	.	.	.

[1] This date is October 18, 2000, unless otherwise noted.

[FR Doc. 01–31483 Filed 12–21–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[DC001–1000; FRL–7121–7]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; District of Columbia; Department of Health

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and delegation.

SUMMARY: EPA is taking direct final action to approve the District of Columbia (the District) Department of Health's (DoH's) request for delegation of authority to implement and enforce its hazardous air pollutant general provisions and hazardous air pollutant emission standards for perchloroethylene dry cleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, halogenated solvent cleaning, and publicly owned treatment works, as well as the test methods, which have been adopted by reference from the Federal requirements set forth in the Code of Federal Regulations (CFR). This approval will automatically delegate future amendments to these regulations once the District incorporates those amendments into its regulations. In addition, EPA is taking direct final action to approve the District's mechanism for receiving delegation of future hazardous air pollutant regulations. This mechanism entails DoH's incorporation by reference of the Federal standard (unchanged), into its hazardous air pollutant regulation, DoH's notification to EPA of such incorporation, and DoH's submission of a delegation request letter to EPA following EPA notification of a new Federal requirement. EPA is not waiving its notification and reporting requirements, therefore, sources will need to send notifications and reports to both DoH and EPA. This action pertains to affected sources, as defined by the Clean Air Act's (CAA or the Act) hazardous air pollutant program. EPA is taking this action in accordance with the Act.

DATES: This direct final rule will be effective February 25, 2002 unless EPA receives adverse or critical comments by January 25, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments on this action should be sent concurrently to: Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Mail Code 3AP11, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, and Donald E. Wambsgans II, Program Manager of the Air Quality Division, District of Columbia Department of Health, 825 North Capital Street, NE., Suite 400, Washington, DC 20002. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the District of Columbia Department of Health, 825 North Capital Street, NE., Suite 400, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Dianne J. McNally, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street (3AP11), Philadelphia, PA 19103–2029, *mcnally.dianne@epa.gov* (telephone 215–814–3297). Please note that any formal comments must be submitted, in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Section 112(l) of the Act and 40 CFR part 63 subpart E authorize EPA to approve of State rules and programs to be implemented and enforced in place of certain CAA requirements, including the National Emission Standards for Hazardous Air Pollutants set forth in 40 CFR part 63. EPA promulgated the program approval regulations on November 26, 1993 (58 FR 62262) and subsequently amended these regulations

on September 14, 2000 (65 FR 55810). An approvable State program must contain, among other criteria, the following elements:

(a) A demonstration of the state's authority and resources to implement and enforce regulations that are at least as stringent as the NESHAP requirements;

(b) A schedule demonstrating expeditious implementation of the regulation; and

(c) A plan that assures expeditious compliance by all sources subject to the regulation.

On May 21, 2001, EPA received a request from the District's DoH seeking delegation of authority to implement and enforce the hazardous air pollutant regulations for certain affected sources defined in 40 CFR part 63. At the present time, this request includes the hazardous pollutant general provisions and regulations for perchloroethylene dry cleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, halogenated solvent cleaning, publicly owned treatment works, as well as the hazardous pollutant regulation test methods which have been adopted by reference from the Federal requirements set forth in 40 CFR part 63, subparts A, M, N, T, VVV and Appendix A. The District also requested that EPA automatically delegate future amendments to these regulations and approve DoH's mechanism for receiving delegation of future hazardous air pollutant regulations which it adopts unchanged from the Federal requirements. This mechanism entails the DoH's incorporation by reference of the Federal standard, unchanged, into its hazardous air pollutant regulation at Section 700 of Title 20 of the District of Columbia Municipal Regulation, DoH's notification to EPA of such incorporation, and DoH's submission of a delegation request letter to EPA following notification of a new Federal requirement.

II. EPA's Analysis of the District's Submittal

Based on the District's program approval request and its pertinent laws and regulations, EPA has determined that such an approval is appropriate in that the District has satisfied the criteria of 40 CFR 63.91. In accordance with 40 CFR 63.91(d)(3)(i), the District's DoH submitted a written finding by the District of Columbia Corporation Counsel which demonstrates that the District of Columbia has the necessary legal authority to implement and enforce its regulations, including the enforcement authorities which meet 40 CFR 70.11, the authority to request information from regulated sources, and the authority to inspect sources and records to determine compliance status. In accordance with 40 CFR 63.91(d)(3)(ii), the District submitted copies of its statutes, regulations and requirements that grant authority to DoH to implement and enforce the regulations. In accordance with 40 CFR 63.91(d)(3)(iii)–(v), the District submitted documentation of adequate resources and a schedule and plan to assure expeditious implementation and compliance by all sources. Therefore, the District's program has adequate and effective authorities, resources, and procedures in place for implementation and enforcement of sources subject to the requirements of 40 CFR part 63, subparts A, M, N, T, VVV and Appendix A, as well as any future emission standards, should the District's DoH seek delegation for these standards. The DoH adopts the emission standards promulgated in 40 CFR part 63 into section 700 of Title 20 of the District of Columbia Municipal Regulations (DCMR). The District's DoH has the primary authority and responsibility to carry out all elements of these programs for all sources covered in the District of Columbia, including on-site inspections, record keeping reviews, and enforcement.

III. Terms of Program Approval and Delegation of Authority

In order for the District's DoH to receive automatic delegation of future amendments to the hazardous air pollutant general provisions and the perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, halogenated solvent cleaning, publicly owned treatment works regulations and test method regulations, each such amendment must be legally adopted by the District of Columbia. As stated earlier, these amendments are adopted into section 700 of Title 20 of the DCMR. The delegation of amendments to these rules will be finalized on the effective date of the legal adoption. The DoH will notify EPA of its adoption of the Federal regulation amendments.

EPA has also determined that DoH's mechanism for receiving delegation of future hazardous air pollutant regulations, which it adopts unchanged from the Federal requirements, can be approved. This mechanism requires DoH to legally adopt the Federal regulation into section 700 of Title 20 of the DCMR and to notify EPA of such adoption. The DoH is also required to submit a delegation request letter to EPA following EPA notification of a new Federal requirement. EPA will grant the delegation request, if appropriate, by sending a letter to DoH outlining the authority to implement and enforce the standard. The delegation will be finalized within 10 days of receipt of the delegation letter unless DoH files a negative response. The official notice of delegation of additional emission standards will be published in the **Federal Register**.

The notification and reporting provisions in 40 CFR part 63 requiring the owners or operators of affected sources to make submissions to the Administrator shall be met by sending such submissions to the District's DoH and EPA Region III.

If at any time there is a conflict between a District regulation and a Federal regulation, the Federal regulation must be applied if it is more stringent than that of the District. EPA is responsible for determining stringency between conflicting regulations. If the District's DoH does not have the authority to enforce the more stringent Federal regulation, it shall notify EPA Region III, in writing, as soon as possible so that this portion of the delegation may be revoked.

If EPA determines that DoH's procedures for enforcing or implementing the 40 CFR part 63 requirements are inadequate, or are not being effectively carried out, this delegation may be revoked in whole or in part in accordance with the procedures set out in 40 CFR 63.96(b).

Certain provisions of 40 CFR part 63 allow only the Administrator of EPA to take further standard setting actions. In addition to the specific authorities retained by the Administrator in 40 CFR 63.90(d) and the "Delegation of Authorities" section for specific standards, EPA Region III is retaining the following authorities, in accordance with 40 CFR 63.91(g)(2)(ii):

(1) Approval of alternative non-opacity emission standards, e.g., 40 CFR 63.6(g) and applicable sections of relevant standards;

(2) Approval of alternative opacity standards, e.g., 40 CFR 63.9(h)(9) and applicable sections of relevant standards;

(3) Approval of major alternatives to test methods, as defined in 40 CFR 63.90(a), e.g., 40 CFR 63.7(e)(2)(ii) and (f) and applicable sections of relevant standards;

(4) Approval of major alternatives to monitoring, as defined in 40 CFR 63.90(a), e.g., 40 CFR 63.8(f) and applicable sections of relevant standards; and

(5) Approval of major alternatives to recordkeeping and reporting, as defined in 40 CFR 63.90(a), e.g., 40 CFR 63.10(f) and applicable sections of relevant standards.

The following provisions are included in this delegation, in accordance with 40 CFR 63.91(g)(1)(i), but may only be exercised on a case-by-case basis. When any of these authorities are exercised, the District's DoH must notify EPA Region III in writing:

(1) Applicability determinations for sources during the title V permitting process and as sought by an owner/operator of an affected source through a formal, written request, e.g., 40 CFR 63.1 and applicable sections of relevant standards[1];

(2) Responsibility for determining compliance with operation and maintenance requirements, e.g., 40 CFR 63.6(e) and applicable sections of relevant standards;

(3) Responsibility for determining compliance with non-opacity standards, e.g., 40 CFR 63.6(f) and applicable sections of relevant standards;

(4) Responsibility for determining compliance with opacity and visible emission standards, e.g., 40 CFR 63.6(h) and applicable sections of relevant standards;

(5) Approval of site-specific test plans[2], e.g., 40 CFR 63.7(c)(2)(i) and (d) and applicable sections of relevant standards;

(6) Approval of minor alternatives to test methods, as defined in 40 CFR 63.90(a), e.g., 40 CFR 63.7(e)(2)(i) and applicable sections of relevant standards;

(7) Approval of intermediate alternatives to test methods, as defined in 40 CFR 63.90(a), e.g., 40 CFR 63.7(e)(2)(ii) and (f) and applicable sections of relevant standards;

(8) Approval of shorter sampling times/volumes when necessitated by process variables and other factors, e.g., 40 CFR 63.7(e)(2)(iii) and applicable sections of relevant standards;

(9) Waiver of performance testing, e.g., 40 CFR 63.7 (e)(2)(iv), (h)(2), and (h)(3) and applicable sections of relevant standards;

(10) Approval of site-specific performance evaluation (monitoring) plans[3], e.g., 40 CFR 63.8(c)(1) and (e)(1) and applicable sections of relevant standards;

(11) Approval of minor alternatives to monitoring methods, as defined in 40 CFR 63.90(a), e.g., 40 CFR 63.8(f) and applicable sections of relevant standards;

(12) Approval of intermediate alternatives to monitoring methods, as defined in 40 CFR 63.90(a), e.g., 40 CFR 63.8(f) and applicable sections of relevant standards;

(13) Approval of adjustments to time periods for submitting reports, e.g., 40 CFR 63.9 and 63.10 and applicable sections of relevant standards; and

(14) Approval of minor alternatives to recordkeeping and reporting, as defined in 40 CFR 63.90(a), e.g., 40 CFR 63.10(f) and applicable sections of relevant standards.

As required, the District's DoH and EPA Region III will provide the necessary written, verbal and/or electronic notification to ensure that each agency is fully informed regarding the interpretation of applicable regulations in 40 CFR part 63. In instances where there is a conflict between a DoH interpretation and a Federal interpretation of applicable regulations in 40 CFR part 63, the Federal interpretation must be applied if it is more stringent than that of DoH. Written, verbal and/or electronic notification will also be used to ensure that each agency is informed of the compliance status of affected sources in the District of Columbia. The District's DoH will comply with all of the requirements of 40 CFR 63.91(g)(1)(ii). Quarterly reports will be submitted to EPA by the District's DoH to identify sources determined to be applicable during that quarter.

Although the District's DoH has primary authority and responsibility to implement and enforce the hazardous air pollutant general provisions and hazardous air pollutant emission standards for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, halogenated solvent cleaning, publicly owned treatment works and the hazardous pollutant test methods, nothing shall preclude, limit, or interfere with the authority of EPA to exercise its enforcement, investigatory, and information gathering authorities concerning this part of the Act.

IV. Final Action

EPA is approving the District DoH's request for delegation of authority to implement and enforce its hazardous air pollutant general provisions and its regulations for perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, halogenated solvent cleaning, publicly owned treatment works and hazardous pollutant test methods which have been adopted by reference from 40 CFR part 63, subparts A, M, N, T, VVV and Appendix A, respectively. This approval will automatically delegate future amendments to these regulations. In addition, EPA is approving of DoH's mechanism for receiving delegation of future hazardous air pollutant regulations which it adopts, unchanged, from the Federal requirements. This mechanism entails legal adoption by the District of Columbia of the amendments or rules into Section 700 of Title 20 of the DCMR, DoH's notification to EPA of such incorporation and DoH's submission of a delegation request letter to EPA following notification by EPA of a new Federal requirement. This action pertains only to affected sources, as defined by 40 CFR part 63. The delegation of authority shall be administered in accordance with the terms outlined in this document. This delegation of authority is codified in 40 CFR 63.99.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial rule and anticipates no adverse comment because the District DoH's request for delegation of the hazardous pollutant general provisions and the hazardous air pollutant regulations pertaining to perchloroethylene drycleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, halogenated solvent cleaning, publicly owned treatment works and test methods and its request for automatic delegation of future amendments to these rules and future standards, when specifically identified, does not alter the stringency of these regulations and is in accordance with all program approval regulations. However,

[1] Applicability determinations are considered to be nationally significant when they:

(i) Are unusually complex or controversial;

(ii) Have bearing on more than one state or are multi-Regional;

(iii) Appear to create a conflict with previous policy or determinations;

(iv) Are a legal issue which has not been previously considered; or

(v) Raise new policy questions and shall be forwarded to EPA Regional III prior to finalization.

Detailed information on the applicability determination process may be found in EPA document 305–B–99–004 *How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring*, dated February 1999. The DoH may also refer to the Compendium of Applicability Determinations issued by the EPA and may contact EPA Region III for guidance.

[2] The DoH will notify EPA of these approvals on a quarterly basis by submitting a copy of the test plan approval letter. Any plans which propose major alternative test methods or major alternative monitoring methods shall be referred to EPA for approval.

[3] The DoH will notify EPA of these approvals on a quarterly basis by submitting a copy of the performance evaluation plan approval letter. Any plans which propose major alternative test methods or major alternative monitoring methods shall be referred to EPA for approval.

in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve of DoH's request for delegation if adverse comments are filed. This rule will be effective on February 25, 2002 without further notice unless EPA receives adverse comment by January 25, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies 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.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing requests for rule approval under CAA section 112, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove requests for rule approval under CAA section 112 for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a request for rule approval under CAA section 112, to use VCS in place of a request for rule approval under CAA section 112 that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. 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. EPA will submit 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 the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 25, 2002. 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, pertaining to the approval of DoH's delegation of authority for the hazardous air pollutant general provisions and regulations for perchloroethylene dry cleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, halogenated solvent cleaning, publicly owned treatment works and test methods (CAA section 112), may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control , Hazardous substances, Intergovernmental relations.

Dated: December 11, 2001.

Judith M. Katz,

Director, Air Protection Division, Region III.

40 CFR part 63 is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by adding paragraph (a)(9) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(9) District of Columbia.

(i) The District of Columbia is delegated the authority to implement and enforce the regulations in 40 CFR part 63, subparts A, M, N, T, VVV and Appendix A and all future unchanged 40 CFR part 63 standards and amendments, if delegation of future standards and amendments is sought by the District of Columbia Department of Health and approved by EPA Region III, at affected sources, as defined by 40 CFR part 63, in accordance with the final rule, dated December 26, 2001, effective February 25, 2002, and any

mutually acceptable amendments to the terms described in the direct final rule.

* * * * *

[FR Doc. 01–31485 Filed 12–21–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301198; FRL–6816–2]

RIN 2070–AB78

Imazapic; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of imazapic, (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methyl-3-pyridinecarboxylic acid and its metabolite (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-hydroxymethyl-3-pyridinecarboxylic acid, both free CL 263284 and conjugated CL 189215) in or on grass, forage and grass, hay and the combined residues of imazapic and its metabolite CL 263284 in or on milk; fat, meat, and meat byproducts (except kidney) of cattle, goats, horses, and sheep; and kidney of cattle, goats, horses, and sheep. BASF requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective December 26, 2001. Objections and requests for hearings, identified by docket control number OPP–301198, must be received by EPA on or before February 25, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301198 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–5697; and e-mail address: tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301198. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 24, 2000 (65 FR 51608) (FRL–6598–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 9F5092) for tolerance by American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543–0400. This notice included a summary of the petition prepared by American Cyanamid, the registrant at the time of filing. The current registrant for the chemical is BASF, at the same address. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.490(a) be amended by establishing a tolerance for combined residues of the herbicide imazapic and its hydroxymethyl metabolite, both free (CL 263284) and conjugated (CL 189215) in or on the raw agricultural commodities grass, forage at 35 ppm, and grass, hay at 15 parts per million (ppm). Tolerances were also proposed for the combined residues of imazapic and its free hydroxymethyl metabolite in or on milk at 0.1 ppm; fat, meat, and meat byproducts (except kidney) of cattle, goats, horses, and sheep at 0.1 ppm; and kidney of cattle, goats, horses, and sheep at 2.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from

aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of imazapic and its metabolite, both free CL 263284 and conjugated CL 189215, in or on grass, forage at 30 ppm, and grass, hay at 15 ppm; and for the combined residues of imazapic and its free hydroxymethyl metabolite in milk at 0.1 ppm; fat, meat, and meat byproducts (except kidney) of cattle, goats, horses, and sheep at 0.1 ppm; and kidney of cattle, goats, horses, and sheep at 1.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by imazapic are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—IMAZAPIC TECHNICAL SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type (All Studies Acceptable)	Results
870.3100	90-Day oral toxicity rodents-rat	NOAEL = 1,552 mg/kg/day in males, 1,728 mg/kg/day in females (HDT) LOAEL = not established
870.3200	21-Day dermal toxicity-rabbit	NOAEL = 1,000 mg/kg/day (males and females) LOAEL = not established
870.3700	Prenatal developmental in rodents-rat	Maternal NOAEL = 1,000 mg/kg/day (HDT) LOAEL = not established Developmental NOAEL = 1,000 mg/kg/day LOAEL = not established
870.3700	Prenatal developmental in nonrodents-rabbit	Maternal NOAEL = 350 mg/kg/day LOAEL = 500 mg/kg/day based on decreased body weight gain and food consumption. At 700 mg/kg/day (HDT), there was excessive mortality resulting in a total of only 7 surviving litters Developmental NOAEL = 500 mg/kg/day LOAEL = not established. Due to excessive mortality at 700 mg/kg/day, only 47 fetuses were available for examination which precluded a meaningful evaluation of developmental findings at this dose level
870.3800	Reproduction and fertility effects-rat	Parental/Systemic NOAEL = 1,205 mg/kg/day in males, 1,484 mg/kg/day in females (HDT) LOAEL = not established Reproductive NOAEL = 1,205 mg/kg/day in males, 1,484 mg/kg/day in females LOAEL = not established Offspring NOAEL = 1,205 mg/kg/day in males, 1,484 mg/kg/day in females LOAEL = not established

TABLE 1.—IMAZAPIC TECHNICAL SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type (All Studies Acceptable)	Results
870.4100	Chronic toxicity dogs	NOAEL = not established LOAEL = 137 mg/kg/day in males, 180 mg/kg/day in females based on increased incidence of minimal degeneration and/or necrosis and lymphocyte and/or macrophage infiltration in skeletal muscle in both males and females and slightly decreased blood creatinine levels in females (LDT)
870.4100/870.4200	Chronic/carcinogenicity rats	NOAEL = 1,029 mg/kg/day in males, 1,237 mg/kg/day in females (HDT) LOAEL = not established No evidence of carcinogenicity
870.4300	Carcinogenicity mice	NOAEL = 1,134 mg/kg/day in males, 1,422 mg/kg/day in females (HDT) LOAEL = not established No evidence of carcinogenicity
870.5265	Gene mutation	Non-mutagenic when tested up to 5,000 µg/plate, in presence and absence of activation, in *S. typhimurium* strains TA98, TA100, TA1535 and TA1537 and *E.coli* strain WP2uvra.
870.5300	Gene mutation	Non-mutagenic at the HGPRT locus in Chinese hamster ovary (CHO) cells tested up to cytotoxic concentrations or limit of solubility, in presence and absence of activation.
870.5375	Chromosome aberration	Did not induce structural chromosome aberration in CHO cell cultures in the presence and absence of activation.
870.5385	Chromosomal aberration	Non-mutagenic in rat bone marrow chromosomal aberrations assay up to 5,000 mg/kg.
870.7485	Metabolism and pharmacokinetics - rat	Total recovery of the administered dose was 98–106% at 7 days. Urinary excretion was the major route of elimination (94–102% of the dose), with only unchanged parent detected. There was no evidence of bioaccumulation in the tissues. There were no sex- or dose-related differences following oral or intravenous administration.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences. Because a developmental neurotoxicity study is not needed, there are currently no residential uses, dietary exposure assessments will not underestimate the potential exposures for infants and children, and the toxicology database is complete, no additional FQPA Safety Factor (FQPA SF) is required.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk.

A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for imazapic used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR IMAZAPIC FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (general population and females 13-50 years old)	None	An acute dietary endpoint was not selected based on the absence of an appropriate endpoint attributed to a single dose	None
Chronic dietary (all populations)	LOAEL= 137 mg/kg/day UF = 300 Chronic RfD = 0.5 mg/kg/day	FQPA SF = 1X cPAD = cRfD/FQPA SF = 0.5 mg/kg/day	LOAEL = 137 mg/kg/day based on increased incidence of minimal degeneration and/or necrosis of skeletal muscle in 1 year dog feeding study
Incidental oral, short-term (1-7 days)	Oral NOAEL = 350 mg/kg/day	LOC = 100	LOAEL = 500 mg/kg/day based on decreased body weight and food consumption during the dosing period in rabbit developmental study
Incidental oral, intermediate-term (7 days-several months)	Oral NOAEL = 350 mg/kg/day	LOC = 100	LOAEL = 500 mg/kg/day based on decreased body weight and food consumption during the dosing period in rabbit developmental study
Short- and intermediate-term dermal (1-7 days and 1 week-several months) (Occupational)	None	No systemic toxicity was seen following repeated dermal application at 1,000 mg/kg/day over a 3-week period. Since no hazard was identified, quantification is not required.	None
Long-term dermal (several months-lifetime) (Occupational)	Oral LOAEL = 137 mg/kg/day (dermal absorption rate = 50%)	LOC for MOE = 300	LOAEL = 137 mg/kg/day based on increased incidence of minimal degeneration and/or necrosis of skeletal muscle in 1 year dog feeding study
Short- and intermediate-term inhalation (1-7 days and 1 week-several months) (Occupational)	Oral study NOAEL= 350 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100	LOAEL = 500 mg/kg/day based on decreased body weight and food consumption during dosing in rabbit developmental study
Long-term inhalation (several months-lifetime) (Occupational)	Oral study LOAEL= 137 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 300	LOAEL = 137 mg/kg/day based on increased incidence of minimal degeneration and/or necrosis of skeletal muscle in 1 year dog feeding study
Cancer (oral, dermal, inhalation)	Cancer classification ("Group E")	Risk assessment not required	No evidence of carcinogenicity

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.490(a) for the combined residues of imazapic and its metabolites CL 263284 and CL 189215, in or on peanut, nutmeat at 0.1 ppm. Time-limited tolerances set to expire December 31, 2001 are established under (40 CFR 180.490(b) in connection with section 18 emergency exemptions (99NE0009) for residues of imazapic and its metabolites CL 263284 and CL 189215 for grass, forage at 30 ppm; grass, hay at 15 ppm; milk at 0.10 ppm; fat, meat, and meat byproducts (except kidney) of cattle, goats, hogs, horses, and sheep at 0.10 ppm; and kidney of cattle, goats, hogs, horses, and sheep at 1.0 ppm. The present analyses included the published peanut values together with re-evaluated tolerance levels for livestock-derived commodities, based on the new grass use proposed. Risk assessments were conducted by EPA to assess dietary exposures from imazapic in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-

use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. An acute exposure assessment is not applicable based on the absence of an appropriate effect of concern.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™ version 7.73) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Residues present at tolerance levels, 100% of each crop is treated, and the use of default processing concentration factors (Tier 1 analysis).

iii. *Cancer.* A cancer risk assessment was not conducted, since imazapic has been classified as a "Group E" chemical (evidence of non-carcinogenicity for humans) based upon lack of evidence of carcinogenicity in two adequate studies (rats and mice).

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for imazapic in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of imazapic.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentrations in Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to imazapic they are further discussed in the aggregate risk sections below.

Based on the FIRST and SCI-GROW models, the EECs of imazapic for acute exposures are estimated to be 17 parts per billion (ppb) for surface water and 14 ppb for ground water. The EECs for chronic exposures are estimated to be 1.5 ppb for surface water and 14 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Imazapic is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether imazapic has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, imazapic does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that imazapic has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* Based on the available data, no evidence of increased susceptibility was seen in the rat and rabbit prenatal toxicity studies or following prenatal/postnatal exposure in the 2-generation reproduction study.

3. *Conclusion.* There is a complete toxicity data base for imazapic and exposure data are complete or are estimated based on data that reasonably account for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed because: A developmental neurotoxicity study is not needed; there are currently no residential uses; and dietary exposure assessments will not underestimate the potential exposures for infants and children.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water EECs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the

Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Imazapic is not expected to pose an acute risk because no acute endpoint of concern was identified in the toxicity test.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to imazapic from food will utilize 0.1% of the cPADs for the U.S. population, all infants, and children 1-6 years old. There are no residential uses for imazapic that result in chronic residential exposure to imazapic. In addition, there is potential for chronic dietary exposure to imazapic in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO IMAZAPIC RESIDUES

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.5	0.000269	1.5	14	17,000
All infants (< 1 year old)	0.5	0.000505	1.5	14	5,000
Children (1-6 years old)	0.5	0.000684	1.5	14	5,000

3. *Short- or intermediate-term risk.* Since there are no registered uses for imazapic which would result in non-dietary, non-occupational exposure, contributions to the aggregate risk from both short- and intermediate-term non-dietary exposures are not expected.

4. *Aggregate cancer risk for U.S. population.* Imazapic has been classified as a "Group E" chemical (evidence of non-carcinogenicity for humans); therefore imazapic is not expected to pose a cancer risk.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to imazapic residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate independent method validation (ILV) studies have been submitted in support of all methods. A method which is similar to the peanut enforcement method has been submitted for the determination of residues of imazapic and its metabolites CL 263284 and CL 189215 in/on grass forage and hay, and methods for the enforcement of tolerances of imazapic and CL 263284 in milk and livestock tissues and an HPLC/MS method for the enforcement of tolerances in fat have been submitted.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican maximum residue limits (MRLs) for imazapic residues.

C. Conditions

The registrant has committed to conduct four side-by-side grass field trials using the maximum rate WDG acid formulation. The registrant has also agreed to conduct four additional grass field trials reflecting a single postemergence application of the 2 lb acid equivalence (ae)/gal ammonium salt SC formulation at 0.1875 lb ae/A; these trials will be conducted in Regions 7 and 8. The registrant also is required to conduct a 28–day inhalation toxicity study, using the protocol for the existing 90–day inhalation toxicity study. The results of this study will provide a basis from which to determine more reliable route-specific Margins of Exposure (MOEs) for worker inhalation risks rather than the less reliable route-to-route MOE calculations currently being used.

V. Conclusion

Therefore, the tolerance is established for combined residues of the herbicide imazapic and its hydroxymethyl metabolite, both free (CL 263284) and conjugated (CL 189215) in or on the raw agricultural commodities grass, forage at 30 ppm, and grass, hay at 15 ppm. Tolerances are also established for the combined residues of imazapic and its free hydroxymethyl metabolite in or on milk at 0.1 ppm; fat, meat, and meat byproducts (except kidney) of cattle, goats, horses, and sheep at 0.1 ppm; and kidney of cattle, goats, horses, and sheep at 1.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the

necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301198 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 25, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request 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 information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301198, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process

to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. 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. EPA will submit 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 final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 11, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.490 is amended by revising paragraph (a) and removing and reserving the text of paragraph (b) to read as follows:

§ 180.490 Imazapic-ammonium; tolerances for residues.

(a) *General.* (1) Tolerances are established for combined residues of the herbicide imazapic, (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methyl-3-pyridinecarboxylic acid and its metabolite (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-hydroxymethyl-3-pyridinecarboxylic acid, both free and conjugated, in or on the following food commodities:

Commodity	Parts per million
Grass, forage	15
Grass, hay	30
Peanut nutmeat	0.1

(2) Tolerances are also established for the combined residues of the herbicide imazapic, (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methyl-3-pyridinecarboxylic acid and its free metabolite (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-hydroxymethyl-3-pyridinecarboxylic acid, in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.10
Cattle, kidney	1.0
Cattle, mbyp (except kidney)	0.1
Cattle, meat	0.1
Goats, fat	0.1
Goats, kidney	1.0
Goats, mbyp (except kidney)	0.1
Goats, meat	0.1
Horses, fat	0.1
Horses, kidney	1.0
Horses, mbyp (except kidney)	0.1
Horses, meat	0.1
Milk	0.1

Commodity	Parts per million
Sheep, fat	0.1
Sheep, kidney	1.0
Sheep, mbyp (except kidney)	0.1
Sheep, meat	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. 01–31493 Filed 12–21–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301200; FRL–6816–8]

RIN 2070–AB78

Halosulfuron-methyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of halosulfuron-methyl in or on the melon subgroup. IR-4 requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective December 26, 2001. Objections and requests for hearings, identified by docket control number OPP–301200, must be received by EPA on or before February 25, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301200 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–3194; and e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations", "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301200. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 31, 2001 (66 FR 45993) (FRL–6796–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by the Interregional Research Project Number 4 (IR-4), 681 U.S. Highway 1 South, North Brunswick, NJ 08902–3390. This notice included a summary of the petition prepared by Gowan Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.479 be amended by establishing a tolerance for residues of the herbicide halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl) aminocarbonylamino] sulfonyl-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, in or on the melon subgroup-crop group 9A (includes citron melon, muskmelon, and watermelon) at 0.1 part per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide

chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of halosulfuron-methyl on the melon subgroup at 0.1 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by halosulfuron-methyl are discussed in Unit II.A. of the final rule on halosulfuron-methyl pesticide tolerances published in the **Federal Register** for September 29, 2000 (65 FR 58424) (FRL–6746–2).

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for halosulfuron-methyl used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR HALOSULFURON-METHYL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary females 13–50 years of age	NOAEL = 50 mg/kg/day; UF = 100; Acute RfD = 0.5 mg/kg/day	FQPA SF = 1X; aPAD = acute RfD/FQPA SF = 0.5 mg/kg/day	Developmental- Rabbit; LOAEL = 150 mg/kg/day based on decreased mean litter size and increases in resorptions and post implantation loss.
Chronic Dietary all populations	NOAEL= 10 mg/kg/day; UF = 100; Chronic RfD = 0.1 mg/kg/day	FQPA SF = 1X; cPAD = chronic RfD/FQPA SF = 0.1 mg/kg/day	Chronic Toxicity-Dog; LOAEL 40 mg/kg/day decrease in body weight gain and alterations in hematology and clinical chemistry parameters.
Short-Term Dermal (1 to 7 days) (Residential)	dermal (or oral) study NOAEL= 50 mg/kg/day (dermal absorption rate = 75%)	LOC for MOE = 100 (Residential)	Developmental- Rabbit; LOAEL = 150 mg/kg/day based on decreased mean litter size and increases in resorptions and post implantation loss.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR HALOSULFURON-METHYL FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Intermediate-Term Dermal (1 week to several months) to Long - Term (several months to lifetime) (Residential)	dermal (or oral) study NOAEL = 10 mg/kg/day (dermal absorption rate = 75%	LOC for MOE = 100 (Residential)	Chronic Toxicity-Dog; LOAEL 40 mg/kg/day decrease in body weight gain and alterations in hematology and clinical chemistry parameters.

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.479) for residues of halosulfuron-methyl, in or on the following raw agricultural commodities: squash/cucumber (crop subgroup 9-B); tree nuts (crop group14), pistachio nutmeat; almond hulls; sugar cane; corn (sweet, kernel+cob with husks removed; field grain, fodder and forage; and pop grain and fodder); rice (grain and straw); and cotton (gin by-products and undelinted seed) at the range of 0.05 to 0.8 ppm. Additionally, tolerances for residues of halosulfuron-methyl and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid (CSA, expressed as parent equivalents) are established at 0.1 ppm on meat by-products including cattle, goats, hogs, horses and sheep. Risk assessments were conducted by EPA to assess dietary exposures from halosulfuron-methyl in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The Acute DEEM® analysis was performed assuming tolerance level residues and 100% crop treated (CT) for commodities for which halosulfuron-methyl is registered and 0.1 ppm (the recommended tolerance) and 100% CT for the melon subgroup (crop group 9–A). No reduction factors of any kind were used in the analysis. This analysis is considered highly conservative.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic DEEM® analysis was performed assuming tolerance level residues and 100% crop treated (CT) for commodities for which halosulfuron-methyl is registered and a proposed tolerance 0.1 ppm and 100% CT for the melon subgroup (crop group 9–A). No reduction factors of any kind were used in the analysis. This analysis is considered highly conservative.

iii. *Cancer.* Halosulfuron-methyl is classified as a "not likely" human carcinogen based on a lack of evidence of carcinogenicity in male and female mice and rats. Accordingly, a cancer risk assessment was not conducted.

2. *Dietary exposure from drinking water.* The available data on halosulfuron-methyl (parent) shows that the compound is mobile in soil and is persistent at phytotoxically significant levels for months to years at some sites. Halosulfuron-methyl has the potential to leach to groundwater, and also presents concerns for transport to surface water by runoff.

The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for halosulfuron-methyl in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of halosulfuron-methyl.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to halosulfuron-methyl they are further discussed in the aggregate risk sections below.

Based on the GENEEC model the acute and chronic estimated environmental concentrations (EECs) of halosulfuron-methyl for surface water are estimated to be 8.3 µg/L and 1 7 µg/L, respectively. Based on the SCI-GROW model the estimated EECs of

halosulfuron-methyl for groundwater is estimated to be 0.065 µg/L.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Halosulfuron-methyl is currently registered for use on the following residential non-dietary sites: commercial and residential turf and on other non-crop sites including airports, cemeteries, fallow areas, golf courses, landscaped areas, public recreation areas, residential property, road sides, school grounds, sod or turf seed farms, sports fields, landscaped areas with established woody ornamentals and other similar use sites. The risk assessment was conducted as follows: For short-term exposure and risk for residential lawn applicators (handlers), the resulting dermal exposure for female handlers is 0.000043 mg/kg/day resulting in an MOE of 1,200,000. This MOE does not exceed EPA's level of concern for residential handlers. Chronic- and intermediate-term handler assessments were not conducted because lawn application of halosulfuron-methyl is not expected to be made continuously over the duration of the chronic- or intermediate-term exposure scenarios.

For residential postapplication exposure and risk calculations for adults, short- and intermediate-term exposures result in MOEs that range from 1,800 to 5,200. These MOEs do not exceed EPA's level of concern for adults.

For children's residential postapplication exposure and risk calculations, dermal exposure was combined with incidental oral hand-to-mouth and object-to-mouth exposures (because all exposures are compared to the same endpoint) to represent a worst-case scenario. The short-term risk estimate results in an MOE of 2,900 and the intermediate-term risk results in an MOE of 1,100. These risks do not exceed EPA's level of concern.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether halosulfuron-methyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, halosulfuron-methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that halosulfuron-methyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1 *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There was no indication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to halosulfuron-methyl. In the prenatal developmental toxicity studies in rats and rabbits and the two-generation reproduction study in rats, effects in the offspring were observed only at or above treatment levels which resulted in evidence of parental toxicity.

3. *Conclusion.* There is a complete toxicity database for halosulfuron-methyl and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed because there was no indication of increased susceptibility of rats or rabbits *in utero* and/or postnatal exposure to halosulfuran methyl, and although a developmental neurotoxicity study was required, an additional safety factor was not warranted.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to halosulfuron-methyl will occupy <1% of the aPAD for females (13 years and older), infants, and children (1–6 years old). In

addition, there is potential for acute dietary exposure to halosulfuron-methyl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.— AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO HALOSULFURON-METHYL

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
All infants	0.5	0.00070	8.3	0.065	5,000
Children (1–6 years)	0.5	0.00097	8.3	0.065	5,000
Females (13–50 years	0.5	0.00058	8.3	0.065	15,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to halosulfuron-methyl from food will utilize <1% of the cPAD for the U.S. population, infants (<1 year old), children (1–6 years old), and females (13–50 years old). Based on the use pattern, chronic residential exposure to residues of halosulfuron-methyl is not expected. In addition, there is potential for chronic dietary exposure to halosulfuron-methyl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO HALOSULFURON-METHYL

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.10	0.00020	1.7	0.065	3,500
All infants (<1 year)	0.10	0.00059	1.7	0.065	1,000
Children (1–6 years)	0.10	0.00035	1.7	0.065	1,000
Females (13–50 years)	0.10	0.00016	1.7	0.065	3,000

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Halosulfuron-methyl is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for halosulfuron-methyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 4,500 for females 13–50 years and older, and 2,800 for infants (<1 year old). A short-term risk assessment is required for adults because there is a residential exposure scenario (handler and postapplication). In addition, a short-term risk assessment is required for infants and children because there are residential post-application dermal and oral exposure scenarios. The risk calculations for adult females is expected to result in a higher risk than adult males because a lower body weight is used (60 kg), therefore adult females will represent the U.S. population. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of halosulfuron-methyl in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO HALOSULFURON-METHYL

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. Population	4,500	100	1.7	0.065	17,000
Infants (<1 year old)	2,800	100	1.7	0.065	4,800
Females (13–50 years old)	4,500	100	1.7	0.065	15,000

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Halosulfuron-methyl is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for halosulfuron-methyl.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,700 females 13–50 years old, and 1,100 for infants (<1 year old). An intermediate-term risk assessment is required for adults because there is a residential exposure scenario (handler and postapplication). In addition, an intermediate-term risk assessment is required for infants and children because there are residential post-application dermal and oral exposure scenarios. The risk calculations for adult females is expected to result in a higher risk than adult males because a lower body weight is used (60 kg), therefore adult females will represent the U.S. population. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of halosulfuron-methyl in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 5:

TABLE 5.— AGGREGATE AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO HALOSULFURON-METHYL

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
U.S. Population	1,700	100	1.7	0.065	3,300
Infants (<1 year old)	1,100	100	1.7	0.065	910
Females (13–50 years old)	1,700	100	1.7	0.065	2,800

5. *Aggregate cancer risk for U.S. population.* Halosulfuron-methyl is classified as a not likely human carcinogen based on a lack of evidence of carcinogenicity in male and female mice and rats, and thus no cancer risk is expected from exposure to halosulfuron methyl.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to halosulfuron-methyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

EPA now requires measurement of parent halosulfuron only using the revised enforcement method, Analytical Method for the Determination of MON 12000 in Raw Agricultural Commodities and Processed Fractions. The method was accepted by EPA as an enforcement method and sent to FDA to be included in PAM II.

The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no established Codex, Canadian, or Mexican maximum residue limits (MRLs) or tolerances for residues of halosulfuron-methyl in/on the melon subgroup.

V. Conclusion

Therefore, the tolerance is established for residues of halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl) amino] carbonylaminosulfonyl-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, in or on melon subgroup at 0.1 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301200 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 25, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request 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 information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301200, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal

government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. 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. EPA will submit 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 final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 13, 2001.

Peter Caulkins,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.479 is amended by alphabetically adding the following commodity to the table in paragraph (a)(2) to read as follows:

§ 180.479 Halosulfuron-methyl; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
* * * * *	
Melon Subgroup	0.1
* * * * *	

* * * * *

[FR Doc. 01–31639 Filed 12–21–01; 8:45 am

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7120–8]

Kentucky: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Kentucky has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Kentucky's changes to their hazardous waste program will take effect as provided below. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on February 25, 2002 unless EPA receives adverse written comment by January 25, 2002. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303–3104; (404) 562–8440. You can view and copy Kentucky's application from 8 a.m. to 4:30 p.m. at the following addresses: Kentucky Department for Environmental Protection, Division of Waste Management, Fort Boone Plaza, Building 2, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564–6716; U.S. EPA, Region 4, Library, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104; (404) 562–8190.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303–3104; (404) 562–8440.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Kentucky's application for the Omnibus Provision meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Kentucky Final authorization to operate its hazardous waste program with the Omnibus Provision changes described in the authorization application. Kentucky has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Kentucky, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Kentucky subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Kentucky has enforcement responsibilities under its state hazardous waste program for

violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulation for which Kentucky is being authorized by today's action is already effective, and is not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the state program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the state program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Kentucky Previously Been Authorized for?

Kentucky initially received Final authorization on January 17, 1985, effective January 31, 1985 (50 FR 46437), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on December 19, 1988, March 20, 1989, May 15, 1989, November 30, 1992, March 13, 1995, May 25, 1996, June 25, 1996, and July 22, 1996.

G. What Changes Are We Authorizing With Today's Action?

On June 14, 1996, Kentucky submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Kentucky's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Kentucky Final authorization for the following program change:

Federal requirement	Federal Register	Analogous State authority [1]
17–O—Omnibus Provision	07/15/85 50 FR 28702	Kentucky Revised Statutes (KRS) 224.10–100; 224.46–520; 401 Kentucky Administrative Regulations (KAR) 38:030 § 3 (2)(a).

[1] The Kentucky provision is from the Kentucky Administrative Regulations, effective March 10, 1988.

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements that are more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

Kentucky will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. At the time the State Program is approved in the new areas, EPA will suspend issuance of Federal permits in the State. EPA will transfer any pending permit applications, completed permits or pertinent file information to the State within thirty (30) days of the approval of the State program. Upon the effective date of an equivalent State permit, EPA will terminate those Federal permits issued pursuant to 40 CFR 124.5 and 271.8 and Kentucky's compliance with § 271.13 (d). EPA will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Kentucky is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Kentucky?

Kentucky's Hazardous Waste Program is not being authorized to operate in Indian country.

K. What Is Codification and Is EPA Codifying Kentucky's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart S for this authorization of Kentucky's program until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA

to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Kentucky is not approved to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State. Thus, Executive Order 13175 does not apply to this rule.

This action 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 17, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region IV.

[FR Doc. 01–31487 Filed 12–21–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7121–1]

Tennessee: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Tennessee has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Tennessee's changes to its hazardous waste program will take effect as provided below. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on February 25, 2002, unless EPA receives adverse written comment by January 25, 2002. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104; (404) 562–8440. You can view and copy Tennessee's application from 8:00 a.m. to 4:30 p.m. at the following addresses: Tennessee Department of Environment and Conservation, Division of Solid Waste Management, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535; and EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104; (404) 562–8190.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104; (404) 562–8440.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Tennessee's application for RCRA Cluster VIII meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Tennessee Final authorization to operate its hazardous waste program with the changes described in the authorization application. Tennessee has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and

prohibitions in Tennessee, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Tennessee subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent federal requirements in order to comply with RCRA. Tennessee has enforcement responsibilities under its state hazardous waste program for violations of such programs, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which Tennessee is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register**, we are publishing a separate document that proposes to authorize the state program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the state program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Tennessee Previously Been Authorized for?

Tennessee initially received Final authorization on January 22, 1985, effective February 5, 1985 (50 FR 2820) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on October 26, 2000, effective December 26, 2000 (65 FR 64161), on September 15, 1999, effective November 15, 1999 (64 FR 49998), on January 30, 1998, effective March 31, 1998 (63 FR 45870), on May 23, 1996, effective July 22, 1996 (61 FR 25796), on August 24, 1995, effective October 23, 1995 (60 FR 43979), on May 8, 1995, effective July 7, 1995 (60 FR 22524), on June 1, 1992, effective July 31, 1992 (57 FR 23063), and on June 12, 1987, effective August 11, 1987 (52 FR 22443).

G. What Changes Are We Authorizing With Today's Action?

On March 23, 2001, Tennessee submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Tennessee's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Final authorization for the following program changes:

Federal requirement	Federal Register	Analogous State authority [1]
160—Land Disposal Restrictions; Phase III—Emergency Extension of the KO88 National Capacity Variance.	62 FR 37694, 07/14/97	Tennessee Code Annotated (TCA) 68–212–104(7) & (16); 68–212–106(a)(1) & (2); 68–212–107(a), (d)(1), (3), & (9); Tennessee Revised Code 1200–1–11–10(2)(j)3.
161—Second Emergency Revision of the Land Disposal Restrictions Treatment Standards for Listed Hazardous Waste From Carbamate Production.	62 FR 45568, 08/28/97	Tennessee Code Annotated (TCA) 68–212–104(7) & (16); 68–212–106(a)(1) & (2); 68–212–107(a), (d)(1), (3), & (9); Tennessee Revised Code 1200–1–11–10(3)(a)7, .10(3)(i)1/Table.
162—Clarification of Standards for Hazardous Waste Land Disposal Restriction Treatment Variances.	62 FR 64504, 12/05/97	Tennessee Code Annotated (TCA) 68–212–104(7) & (16); 68–212–106(a)(1) & (2); 68–212–107(a), (d)(1), (3), & (9); Tennessee Revised Code 1200–1–11–.10(3)(3).

Federal requirement	Federal Register	Analogous State authority [1]
163—Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment.	62 FR 64636, 12/08/97	Tennessee Code Annotated (TCA) 68–212–104(6) & (7); 68–212–106(a)(1) & (2); 68–212–107(a), (d)(1), (3), & (6); 68–212–108(a)(1); Tennessee Revised Code 1200–1–11–.06(2)(f)2(iv), .06(5)(d)2(vi), .06(30)(a)2(iii), .06(30)(a)3 & 5; .06(30)(b), .06(30)(d)1(ii)(I)–(IV), .06(31)(a)2(iii), .06(31)(a)3 & 6, .06(31)(k)1, .06(31)(k)2(i)–(iv), .06(31)(m)2(ii)–(iii), .06(31)(o)7(vi). .06(31)(o)13, .06(32)(a)2(i), .06(32)(a)3, .06(32)(c)2, .06(32)(c)3(ii)(IX)I–II, .06(32)(c)3(iii), .06(32)(c)3(iv)(II), .06(32)(d)1(ii), .06(32)(d)2(i), .06(32)(e)3(ii)(III), .06(32)(e)3(ii)(III)II, .06(32)(e)3(ii)(III)II.A & B, .06(32)(e)5(iv), .06(32)(e)6(iii)(I)IV.D, .06(32)(e)6(iii)(III), .06(32)(e)6(iv), .06(32)(e)10(ii)(III), .06(32)(f)2(ii), .06(32)(f)4(i)(III), .06(32)(f)4(ii)(I)II, .06(32)(f)5(ii)(III), .06(32)(g)3(ii), .06(32)(g)3(iv)(I), .06(32)(g)4(ii), .06(32)(g)4(iv)(I), .06(32)(g)7, .06(32)(h)3(iii)(II), .06(32)(h)3(vii), .06(32)(j)1, .06(32)(j)2(i)(II)II, .06(32)(j)6(i), .06(32)(j)10, .06(32)(j)10(i)–(ii); .05(2)(f)2(iv), .05(5)(d)2(vi), .05(27)(a)2(iii), .05(27)(a)4, .05(27)(d)1(ii)(I)–(IV), .05(27)(d)6(ii)(VI)II, .05(28)(a)2(iii), .05(28)(a)5, .05(28)(k)1, .05(28)(k)2(i)–(iv), .05(28)(m)2(ii)–(iii), .05(28)(o)7(vi), .05(28)(o)13, .05(29)(a)2(i), .05(29)(b), .05(29)(c)1, .05(29)(c)1(i)–(ii), .05(29)(c)1(ii)(I)–(IV), .05(29)(c)2, .05(29)(c)2(i)–(ii), .05(29)(c)2(ii)(I)–(III), .05(29)(c)3 & 4, .05(29)(d)2, .05(29)(d)3(ii)(I), .05(29)(d)3(ii)(IX)I–II, .05(29)(d)3(iii), .05(29)(d)3(iv)(II), .05(29)(e)1(ii), .05(29)(e)1(iii)(II)II, .05(29)(e)1(iii)(III), .05(29)(e)1(iii)(III)I, VI, VII & VII.A, .05(29)(e)1(iii)(IV), .05(29)(e)1(iii)(IV)I, II, II.A, II.B, .05(29)(e)1(iii)(V), .05(29)(e)1(iv)(IV), .05(29)(e)2(i), .05(29)(e)2(iii)(II)II, .05(29)(e)2(iii)(III), .05(29)(e)2(iii)(III)VI–VII, .05(29)(e)2(iii)(IV) & (V), .05(29)(e)2(viii)(III), .05(29)(e)2(ix)(IV), .05(29)(e)4(v)(II), .05(29)(f)3(ii)(III), .05(29)(f)3(ii)(III)II, .05(29)(f)3(ii)(III)II.A & B, .05(29)(f)5(iv), .05(29)(f)6(iii)(I)IV.D, .05(29)(f)6(iv), .05(29)(f)10(ii)(III), .05(29)(g)2(ii), .05(29)(g)4(i)(III), .05(29)(g)4(ii)(I)II, .05(29)(g)5(ii)(III), .05(29)(h)3(iv)(I), .05(29)(h)4(iv)(I), .05(29)(h)7, .05(29)(i)3(iii)(II), .05(29)(i)3(vii), .05(29)(k)1, .05(29)(k)2(i)(II)II, .05(29)(k)6(i), .05(29)(k)10, .05(29)(k)10(i) & (ii), .05(53)Appendix VI; .07(5)(a)1(v)
164—Kraft Mill Steam Stripper Condensate Exclusion.	63 FR 18504, 04/15/98	Tennessee Code Annotated (TCA) 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); Tennessee Revised Code 1200–1–11–.02(1)(d)1(xvii).
166—Recycled Used Oil Management Standards, Technical Correction and Clarification.	63 FR 24963, 05/06/99 ..... 63 FR 37780, 07/14/98	Tennessee Code Annotated (TCA) 68–211–106(a)(1) & 2; 68–211–107(a); 68–211–1001 *et seq.*; 68–212–106(a)(1); 68–212–107(a), (d)(1), (3), & (6); Tennessee Revised Code 1200–1–11–.02(1)(e)10, .02(1)(f)1(iii)(IV)I–III, .11(2)(a)9, .11(3)(c)4, .11(3)(c)4(i)–(iv), .11(5)(f)8, .11(5)(f)8(i)–(iv), .11(6)(e)7, .11(6)(e)7(i)–(iv), .11(7)(e)7, .11(7)(e)7(i)–(iv), .11(8)(e)2, .11(8)(e)2(i)–(iv).
167A–Land Disposal Restrictions; Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes.	63 FR 28556, 05/26/98	Tennessee Code Annotated (TCA) 68–212–104(7); 68–212–106(a)(1) & (2); 68–212–107(a) & (d)(1), (3) & (9); Tennessee Revised Code 1200–1–11–.10(1)(b)10, .10(1)(c)4. .10(2)(e)1, 3 & 4, .10(2)(e)5 .10(2)(e)5(i)–(iv), .10(2)(e)6, .10(3)(a)5 & 8, .10(3)(a)/Table "Treatment Mineral Wastes", .10(3)(i)/Table UTS (Universal Treatment Standards)
167B–Land Disposal Restriction Phase IV—Hazardous Soils Treatment Standards and Excluision.	63 FR 28556, 05/26/98	Tennessee Code Annotated (TCA) 68–212–104(7); 68–212–106(a)(1) & (2); 68–212–107(a) & (d)(1), (3) & (9); Tennessee Revised Code 1200–1–11 –.10(1)(b)9, .10(1)(g)1(i)–(ii). .10(1)(g)1(ii)(I)–(II), .10(1)(g)1(iii)intro, .10(1)(g)1(iii)(II), .10(1)(g)1(iv), .10(1)(g)1(iv)/Table, .10(1)(g)1(v)–(vi), .10(1)(g)2(i)–(iii), .10(1)(g)2(iv) intro, .10(1)(g)5 intro, .10(1)(g)5(i)–(ii), .10(3)(e), .10(3)(j)1– 2, .10(3)(j)3 intro. .10(3)(j)3(i) intro, .10(3)(j)3(i)(I)–(III), .10(3)(j)3(ii), .10(3)(j)3(iii) intro, .10(3)(j)3(iii)(I)– (II), .10(3)(j)4, .10(3)(j)5 intro, .10(3)(j)5(i), .10(3)(j)5(ii) intro, .10(3)(j)5(ii)(I)–(II).
167C–Land Disposal Restrictions, Phase IV—Corrections.	63 FR 28556, 05/26/98	Tennessee Code Annotated (TCA) 68–212–104(7); 68–212–106(a)(1) & (2); 68–212–107(a) & (d)(1), (3) & (9); Tennessee Revised Code 1200–1–11.10(1)(d)1(ii)(II)–(III) .10(1)(g)1(vii), .10(1)(g)2(iii)(II)/Table, .10(1)(g)2(iv)(IV)–(V), .10(1)(g)2(v) & (vi), .10(3)(a)5, .10(3)(a)10/Table, .10(3)(c)1, .10(3)(c)1(i)–(iii), .10(3)(f)1 intro, .10(3)(f)4(iii)–(iv), .10(3)(i)1/table UTS, .10(5)Appendix VII, Table 1, .10(5)Appendix VIII.
167D—Mineral Processing Secondary Materials Exclusion.	63 FR 28556, 05/26/98	Tennessee Code Annotated (TCA) 68–212–104(7); 68–212–106(a)(1) & (2); 68–212–107(a) & (d)(1), (3) & (9); Tennessee Revised Code 1200–1–11–.02(1)(b)3(iii), .02(1)(b)3(iv/Table, .02(1)(b)5(i)(III), .02(1)(d)1(xviii) intro, .02(1)(d)1(xviii)(I)–(III), .02(1)(d)1(xviii)(IV)I–III, .02(1)(d)1(xviii)(V)–(VI).
167E—Bevill Exclusion Revisions and Clarifications.	63 FR 28556, 05/26/98	Tennessee Code Annotated (TCA) 68–212–104(7); 68–212–106(a)(1) & (2); 68–212–107(a) & (d)(1), (3) & (9); Tennessee Revised Code 1200–1–11–.02(1)(c)1(ii)(I) & (III), .02(1)(d)3(ii)(III) intro, .02(1)(d)3(ii)(III)I–II, .02(1)(d)3(ii)(III)II.A–T, .02(1)(d)3(ii)(III)III, .02(1)(d)3(ii)(III)III.A & B.

Federal requirement	Federal Register	Analogous State authority [1]
168—Hazardous Waste Conbustors, Revised Standards.	63 FR 33782, 06/19/98	Tennessee Code Annotated (TCA) 68–212–104(7); 68–212–106(a)(1); 68–212–107(a), (d)(1), (3), & (4); 68–212–108(a)(1) & (b); Tennessee Revised Code 1200–1–11– .02(1)(d)1(xix), .02(4)(i) intro, .02(4)(i)1 intro, .02(4)(i)1(i) intro, .02(4)(i)1(i)(I)–(II), .02(4)(i)1(ii), .02(4)(i)2 intro, .02(4)(i)2(i)–(v), .02(4)(i)/Table 1, .02(4)(i)3 intro, .02(4)(i)3(i), .02(4)(i)3(i)(I) intro, .02(4)(i)3(i)(I)I–II, .02(4)(i)3(i)(I)III intro, .02(4)(i)3(i)(I)III.A–D, .02(4)(i)3(i)(II) intro, .02(4)(i)3(i)(II)I–V, .02(4)(i)3(ii) intro, .02(4)(i)3(ii)(I), .02(4)(i)3(ii)(II) intro, .02(4)(i)3(ii)(II)I–II, .02(4)(i)3(ii)(III), .02(4)(i)3(iii) intro, .02(4)(i)3(iii)(I)–(III), .02(4)(i)3(iv)(I) intro, .02(4)(i)3(iv)(I)I–III, .02(4)(i)3(iv)(II), .02(4)(i)3(v) intro, .02(4)(i)3(v)(I) intro, .02(4)(i)3(v)(I)I– III, .02(4)(i)3(v)(II), .02(4)(i)3(vi), .02(4)(i)3(vii) intro, .02(4)(i)3(vii)(I) intro, .02(4)(i)3(vii)(I) I–V, .02(4)(i)3(vii)(II) intro, .02(4)(i)3(vii)(II)I–VIII, .02(4)(i)3(vii)(III), .02(4)(i)3(viii) intro, .02(4)(i)3(viii)(I) intro, .02(4)(i)3(viii)(I)I–IV, .02(4)(i)3(viii)(II), .02(4)(i)3(viii)(III) intro, .02(4)(i)3(viii)(III)I–II, .02(4)(i)3(viii)(IV)–(VII), .02(4)(i)3(viii)(VIII) intro, .02(4)(i)3(viii)(VIII)I–II, .02(4)(i)3(viii)(IX), .02(4)(i)3(ix), .02(4)(i)3(x) intro, .02(4)(i)3(x)(I) intro, .02(4)(i)3(x)(I)I–III, .02(4)(i)3(x)(II)–(VII), .02(4)(i)3(x)(VIII) intro, .02(4)(i)3(x)(VIII)I–VIII, .02(4)(i)3(x)(IX) intro, .02(4)(i)3(x)(IX)I–V, .02(4)(i)3(xi), .02(4)(i)3(xii) intro, .02(4)(i)3(xii)(I)–(III), .02(4)(i)3(xiii); .07(9)(c)5(x), .07(9)(c)5(x)(I)–(II), .07(10)(1)9, .07(3)(c)2(viii).

[1] The Tennessee provisions are from the Tennessee Hazardous Waste Management Regulations effective July 19, 1999.

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements that are more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

Tennessee will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. At the time the State Program is approved, EPA will suspend issuance of Federal permits in the State. EPA will transfer any pending permit applications, completed permits or pertinent file information to the State within thirty (30) days of the approval of the State program. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Tennessee is not authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Tennessee?

Tennessee's Hazardous Waste Program is not being authorized to operate in Indian country.

K. What Is Codification and Is EPA Codifying Tennessee's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart RR for this authorization of Tennessee's program until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Tennessee is not approved to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State. Thus, Executive Order 13175 does not apply to this rule.

This action 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 22, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region IV.

[FR Doc. 01–31489 Filed 12–21–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2848; MM Docket No. 01–168; RM–10187]

Radio Broadcasting Services; Mendocino, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 66 FR 41489 (August 8, 2001), this document adds Channel 266A to Mendocino, California, and removes channel 224A from Mendocino, California. This action enables Station KMFB(FM) to operate with maximum facilities as a Class A FM station, utilizing its current site for that station. The coordinates for Channel 266A at Mendocino are 39–20–33 North Latitude and 123–46–51 West Longitude.

DATES: Effective January 22, 2002.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–168, adopted November 28, 2001, and released December 7, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

1. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 224A and adding Channel 266A at Mendocino, California.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–31562 Filed 12–21–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA–1998–4898, Notice No. 4]

RIN 2130–AB30

Annual Adjustment of Monetary Threshold for Reporting Rail Equipment Accidents/Incidents—Calendar Year 2002

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule establishes at $6,700 the monetary threshold for reporting railroad accidents/incidents involving railroad property damage that occur during calendar year 2002. The monetary threshold of $6,700 for calendar year 2002 represents an $100 increase over last year's monetary threshold of $6,600. This action is needed to ensure and maintain comparability between different years of data by having the threshold keep pace with any increases or decreases in equipment and labor costs so that each year accidents involving the same minimum amount of railroad property damage are included in the reportable accident counts.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Robert L. Finkelstein, Staff Director, Office of Safety Analysis, RRS–22, Mail Stop 17, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6280); or Nancy L. Friedman, Trial Attorney, Office of Chief Counsel, RCC–12, Mail Stop 10, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6034).

SUPPLEMENTARY INFORMATION:

Background

Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). 49 CFR 225.19(b), (c). As revised in 1997, paragraphs (c) and (e) of 49 CFR 225.19, provide that the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents will be adjusted, if necessary, every year in accordance with the procedures outlined in appendix B to part 225, to reflect any cost increases or decreases. 61 FR 30942, 30969 (June 18, 1996); 61 FR 60632, 60634 (Nov. 29, 1996); 61 FR 67477, 67490 (Dec. 23, 1996).

New Reporting Threshold

Approximately one year has passed since the rail equipment accident/incident reporting threshold was last reviewed, and approximately four years since it was revised. 64 FR 69193 (Dec. 10, 1999); 63 FR 71790 (Dec. 30, 1998); 62 FR 63675 (Dec. 2, 1997). Consequently, FRA has recalculated the threshold, as required by § 225.19(c), based on increased costs for labor and increased costs for equipment. FRA has determined that the current reporting threshold of $6,600, which applies to rail equipment accidents/incidents that occur during calendar year 2001, should increase by $100 to $6,700 for the same rail equipment accidents/incidents that occur during calendar year 2002, effective January 1, 2002.

Accordingly, §§ 225.5 and 225.19 and appendix B have been amended to state the reporting threshold for calendar year 2002 and the most recent cost figures and the calculations made to determine that threshold.

Notice and Comment Procedures

In this rule, FRA has recalculated the monetary reporting threshold based on the formula adopted, after notice and comment, in the final rule published June 18, 1996, 61 FR 30959, 30969, and discussed in detail in the final rule published November 29, 1996, 61 FR 30632. FRA has found that both the current cost data inserted into this pre-existing formula and the original cost

data that they replace were obtained from reliable Federal government sources. FRA has found that this rule imposes no additional burden on any person, but rather provides a benefit by permitting the valid comparison of accident data over time. Accordingly, FRA has concluded that notice and comment procedures are impracticable, unnecessary, and contrary to the public interest. As a consequence, FRA is proceeding directly to this final rule.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing regulatory policies and procedures and is considered to be a nonsignificant regulatory action under DOT policies and procedures. 44 FR 11034 (Feb. 26, 1979). This final rule also has been reviewed under Executive Order 12866 and is also considered "nonsignificant" under that Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), FRA has published an interim policy that formally establishes "small entities" as being railroads that meet the line-haulage revenue requirements of a Class III railroad. 62 FR 43024 (Aug. 11, 1997). For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. About 645 of the approximately 700 railroads in the United States are considered small businesses by FRA. FRA certifies that this final rule will have no significant economic impact on a substantial number of small entities. To the extent that this rule has any impact on small entities, the impact will be neutral because the rule is maintaining, rather than increasing, their reporting burden. The American Shortline and Regional Railroad Association (ASLRRA) represents the interests of most small freight railroads and some excursion railroads operating in the United States. FRA field offices and the ASLRRA engage in various outreach activities with small railroads. For instance, when new regulations are issued that affect small railroads, FRA briefs the ASLRRA, which in turn disseminates the information to its members and provides training as appropriate. When a new railroad is formed, FRA safety representatives visit the operation and provide information regarding applicable safety regulations. The FRA regularly addresses questions and concerns regarding regulations raised by railroads. Because this rule is not anticipated to affect small railroads, FRA is not providing alternative treatment for small railroads under this rule.

Paperwork Reduction Act

There are no new information collection requirements associated with this final rule. Therefore, no estimate of a public reporting burden is required.

Federalism Implications

Executive Order 13132, entitled, "Federalism," issued on August 4, 1999, requires that each agency "in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provide[] to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met * * *." This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government, as specified in the Executive Order 13132. Accordingly, FRA has determined that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a Federalism Assessment. Accordingly, a Federalism Assessment has not been prepared.

Environmental Impact

FRA has evaluated this regulation in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions Categorically Excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded:

* * * * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, 2 U.S.C. 1531), each federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in 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, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. The final rule would not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement

of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation (including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking) (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule will not have a significant adverse effect on the supply, distribution, or use of energy and the Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action.

List of Subjects in 49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, FRA amends part 225, title 49, Code of Federal Regulations as follows:

PART 225—RAILROAD ACCIDENTS/INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATIONS

1. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20901, 20902, 21302, 21311; 49 U.S.C. 103; 49 CFR 1.49.

2. By amending § 225.19 by revising the first sentence of paragraph (c) and revising paragraph (e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(c) Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) that result in damages higher than the current reporting threshold (i.e., $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, $6,600 for calendar years 1998 through 2001, and $6,700 for calendar year 2002) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material.

* * *

* * * * *

(e) The reporting threshold is $6,300 for calendar years 1991 through 1996. The reporting threshold is $6,500 for calendar year 1997, $6,600 for calendar years 1998 through 2001, and $6,700 for calendar year 2002. The procedure for determining the reporting threshold for calendar year 1997 and later appears as appendix B to part 225.

3. Part 225 is amended by revising paragraphs 8 and 9 of appendix B to read as follows:

Appendix B to Part 225—Procedure for Determining Reporting Threshold

* * * * *

8. Formula:

$$\text{New Threshold} = \text{Prior Threshold} \times \left\{1 + 0.5\frac{(Wn - Wp)}{Wp} + 0.5\frac{(En - Ep)}{100}\right\}$$

Where:

Prior Threshold = $6,600 (for rail equipment accidents/incidents that occur during calendar year 2001);

Wn = New average hourly wage rate ($) = 18.188333;

Wp = Prior average hourly wage rate ($) = 17.763333;

En = New equipment average PPI value ($) =135.733333;

Ep = Prior equipment average PPI value ($) = 135.633333.

. The result of these calculations is $6,682.254777. Since the result is rounded to the nearest $100, the new reporting threshold for rail equipment accidents/incidents that occur during calendar year 2002 is $6,700, which represents an $100 increase from the monetary threshold for calendar years 1998 through 2001.

Issued in Washington, DC on December 17, 2001.

Allan Rutter,

Administrator, Federal Railroad Administration.

[FR Doc. 01–31521 Filed 12–21–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1301–02; I.D. 102501B]

RIN 0648–AP06

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2002 Specifications

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

ACTION: Final rule, final 2002 specifications, and preliminary commercial quota adjustment; notification of 2002 commercial summer flounder quota harvest for the States of Maine and Delaware.

SUMMARY: NMFS issues final specifications for the 2002 summer flounder, scup, and black sea bass fisheries and makes preliminary adjustments to the 2002 commercial quotas for these fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, as well as other commercial management measures, including scup and black sea bass possession limits and gear modifications. This action also prohibits federally permitted commercial vessels from landing summer flounder in the States of Delaware and Maine in 2002. Regulations governing the summer flounder fishery require publication of this notification to advise these states, Federal vessel permit holders and Federal dealer permit holders that no commercial quota is available for landing summer flounder in Delaware and Maine in 2002. The intent of this action is to comply with implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP), which require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of these fisheries.

DATES: The 2002 final specifications are effective from January 1, 2002, through December 31, 2002. The prohibition on

landings of summer flounder in Delaware and Maine by Federal permit holders is effective 0001 hours January 1, 2002, through 2400 hours December 31, 2002. Sections 648.14 (a)(92), 648.14 (u)(1), 648.123 (a)(1), 648.143 (a), 648.144 (a)(1)(i), 648.144 (b)(2), and 648.145 (d) are effective February 25, 2002.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees; the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA) contained within the RIR, and the Environmental Assessment (EA) are available from the Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail *rick.a.pearson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Light, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

Pursuant to §§ 648.100 (summer flounder), 648.120 (scup), and 648.140 (black sea bass), the Administrator, Northeast Region, NMFS, (Regional Administrator) implements measures for the fishing year to assure that the target fishing mortality rate (F) or exploitation rate for each fishery, as specified in the FMP, is not exceeded. The target F or exploitation rate and management measures (e.g., commercial quotas, recreational harvest limits, minimum mesh requirements, minimum fish sizes, possession limits, and other gear restrictions) are summarized below, by species. Detailed background information regarding the status of the summer flounder, scup and black sea bass stocks and the development of the 2002 specifications for these species was provided in the proposed specifications for the 2002 summer flounder, scup and black sea bass fisheries (66 FR 58097, November 20, 2001). That information is not repeated here. NMFS has considered the comments received during the comment period and, other than a minor change to black sea bass gear measures (escape vents) to reflect a clarification provided by the Council, publishes these final specifications without change from those in the proposed rule.

NMFS will establish the 2002 recreational management measures for summer flounder, scup and black sea bass by publishing a proposed and final rule in the Federal Register at a later date, following receipt of the Council's recommendations, as specified in the FMP.

Regulatory Amendment for Summer Flounder, Scup and Black Sea Bass

NMFS has published proposed regulations to implement a regulatory amendment (66 FR 64392, December 13, 2001) that would revise the way in which the commercial quotas for summer flounder, scup and black sea bass are adjusted if landings in any fishing year exceed the quota allocated (thus resulting in a quota overage). The FMP currently requires that any landings in excess of a commercial quota allocation for a state or period in one year must be deducted from that state's or period's annual quota allocation for the following year. This has created problems because complete landings data for the year are not available until after the beginning of the next fishing year. As a result, it is impossible under the existing system to compile complete landings data for one fishing year, establish overages, and finalize adjustments for the following year prior to the start of the fishing year on January 1st. It has often been necessary for NMFS to publish several subsequent quota adjustments throughout the fishing year as additional landings data from the prior year became available. These adjustments have complicated the resource management efforts of state marine fisheries agencies, and have hampered planning by commercial fishers.

NMFS has proposed in the regulatory amendment to establish a cut-off date of October 31 for landings data to be used in calculating quota overages and making the resultant adjustments to the quotas for the following fishing year. Any additional overages due to landings occurring after October 31, or landings reported late, would be deducted from a state's (or period's) quota allocation for the subsequent year. The quota overages reflected in this final rule for summer flounder, scup and black sea bass are consistent with the measure proposed in the regulatory amendment and are based on landings reported for the period January 1 - October 31, 2001. If the final measures implemented by NMFS to address the quota overage determination problem differ from those contained in the proposed rule, NMFS will publish a notification of any necessary quota adjustments for 2002 in January 2002.

Summer Flounder

The FMP specifies a target F for 2002 of F_{MAX}, the level of fishing that produces maximum yield per recruit. Best available data indicate that F_{MAX} is currently equal to 0.26 (equal to an exploitation rate of about 22 percent from fishing). The total allowable landings (TAL) associated with the target F are allocated 60 percent to the commercial sector and 40 percent to the recreational sector. The commercial quota is then allocated to the coastal states based upon percentage shares specified in the FMP. The recreational harvest limit is specified on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2002.

This final rule implements the specifications contained in the proposed rule, except that the research quota set-aside amount is modified as explained below. This results in a 24.3—million lb (11.02–million kg) summer flounder TAL, allocated 14.58 million lb (6.61–million kg) to the commercial sector and 9.72 million lb (4.40–million kg) to the recreational sector. The TAL was determined by the Summer Flounder Monitoring Committee to have a 50–percent probability of achieving the 2002 target F of 0.26, as specified in the FMP, if the 2001 TAL and assumed discard levels are not exceeded.

The proposed rule reflected the Council's and Board's recommendation to set-aside 2 percent (485,943 lb; 220,420 kg) of the summer flounder TAL for scientific research activities through the process established by Framework Adjustment 2 to the FMP. This process resulted in publication of a Request for Proposals that solicited proposals for 2002, based upon the research priorities identified by the Council (66 FR 38636, July 25, 2001, and 66 FR 45668, August 29, 2001). The

deadline for submission of proposals was September 14, 2001. No research project proposals were recommended for approval that would utilize the summer flounder research set-aside. As a result, this final rule does not establish a research quota set-aside for summer flounder and the entire TAL is available to the commercial and recreational fisheries.

Table 1 presents the final 2001 commercial summer flounder quota for each state, reported 2001 landings for each state through October 31, 2001, and resultant 2001 quota overages.

TABLE 1.— SUMMER FLOUNDER PRELIMINARY COMMERCIAL 2001 LANDINGS BY STATE

State	2001 Quota[1]		Reported 2001 Landings through 10/31/01		Preliminary 2001 Overage	
	Lb	Kg[2]	Lb	Kg[2]	Lb	Kg[2]
ME	2,146	973	22,017	9,987	19,871	9,013
NH	100	45	0	0	.....	.....
MA	647,169	293,551	702,710	318,744	55,451	25,193
RI	1,724,507	782,223	1,387,418	629,322	.....	.....
CT	241,517	109,550	232,941	105,660	.....	.....
NY	834,599	378,568	740,578	335,920	.....	.....
NJ	1,743,704	790,931	1,544,955	700,780	.....	.....
DE	[3](41,708)	(18,918)	4,532	2,056	(46,240)	(20,974)
MD	193,970	87,983	178,585	81,005	.....	.....
VA	2,377,721	1,078,516	1,557,227	706,346	.....	.....
NC	2,651,470	1,202,687	1,804,943	818,708	.....	.....
Total[4]	10,416,903	4,725,028	8,175,906	3,708,528		.....

[1] Reflects quotas as published on September 12, 2001 (66 FR 47413).
[2] Kilograms are as converted from pounds and may not necessarily add due to rounding
[3] Parentheses indicate a negative number.
[4] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Total quota and total landings do not equal the overage because they reflect positive quota balances in several states.

Based upon 2001 landings through October 31, 2001, NMFS adjusts the 2002 commercial quotas for 2001 quota overages. The 2002 initial quota, 2001 quota overages, and preliminary adjusted commercial quotas, by state, for 2002 are presented in Table 2.

TABLE 2.— FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2002

State	Percent Share	2002 Initial Quota		2001 Quota Overages (through 10/31/01)		Adjusted 2002 Quota	
		Lb	Kg[1]	Lb	Kg[1]	Lb	Kg[1]
ME	0.04756	6,933	3,145	19,871	9,013	(12,938)[2]	(5,868)[2]
NH	0.00046	67	30	.....	.....	67	30
MA	6.82046	994,306	451,010	55,541	25,193	938,765	425,817
RI	15.68298	2,286,310	1,037,053	.....	.....	2,286,310	1,037,053
CT	2.25708	329,044	149,258	.....	.....	329,044	149,252
NY	7.64699	1,114,800	505,665	.....	.....	1,114,800	505,665
NJ	16.72499	2,438,217	1,105,957	.....	.....	2,438,217	1,105,957
DE	0.01779	2,593	1,176	(46,240)[2]	(20,974)[2]	(43,647)[2]	(19,798)[2]
MD	2.03910	297,266	134,838	.....	.....	297,266	134,838
VA	21.31676	3,107,619	1,409,592	.....	.....	3,107,619	1,409,592
NC	27.44584	4,001,133	1,814,883	.....	.....	4,001,133	1,814,883
Total[3]	100.00	14,578,288	6,612,600	.....	.....	14,513,221	6,583,086

[1] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.
[3] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0).

The Commission has established a system whereby 15 percent of each state's quota would be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery has been closed. The intent of the incidental catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while also ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in these 2002 final specifications, because NMFS does not have authority to establish such subcategories.

Delaware and Maine Summer Flounder Closures

Table 2 above indicates that, for the States of Delaware and Maine, the amount of the 2001 summer flounder quota overage is greater than the amount of commercial quota allocated to the states for 2002. As a result, there is no quota available for 2002 in either Delaware or Maine. The regulations at § 648.4 (b) provide that Federal permit holders agree, as a condition of their permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available for

harvest. Therefore, effective January 1, 2002, landings of summer flounder in Delaware and Maine by vessels holding commercial Federal fisheries permits are prohibited for the 2002 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware or Maine for the 2002 calendar year, unless additional quota becomes available through a transfer.

Scup

The FMP established a target exploitation rate for scup of 21 percent for the 2002 fishing year. The total allowable catch (TAC) associated with the exploitation rate is allocated 78 percent to the commercial sector and 22 percent to the recreational sector by the FMP. Scup discard estimates are deducted from both TACs to establish for both sectors (TAC - discards = TAL). The commercial TAL is then allocated on a coastwide basis to three quota periods: Winter I (January–April)–45.11 percent; Summer (May–October)–38.95 percent; and Winter II (Nov–December)–15.94 percent. The recreational harvest limit is allocated on a coastwide basis.

The proposed rule reflected the Council's and Board's recommendation to set-aside 3 percent (323,100 lb; 146,556 kg) of the scup TAL for scientific research activities through the process established by Framework Adjustment 2 to the FMP. Three research projects that utilized scup research quota have been recommended for approval. These three projects would utilize 222,775 lb (101,049 kg) of the scup research set-aside. The scup TAL has been adjusted to reflect this research set-aside. If the NOAA Grants Office should disapprove any of these projects, the associated research quota will be restored to the scup TAL through publication of a rule by NMFS.

This final rule implements the specifications contained in the proposed rule, with the adjustment to the research quota set-aside as described; a scup TAC of 12.92 million lb (5.86 million kg); a research quota set-aside of 222,775 (101,049 kg); a TAL of 10.55 million lb (4.78 million kg); a commercial TAL of 7,834,522 lb (3,553,679 kg) and a recreational harvest limit of 2,712,703 lb (1,230,461 kg).

Table 3 presents the final 2001 commercial scup quota for each period, reported 2001 landings for the Winter I and Summer periods through October 31, 2001, and resultant 2001 quota overages.

TABLE 3.— SCUP PRELIMINARY 2001 COMMERCIAL LANDINGS BY QUOTA PERIOD AND 2001 OVERAGES

Quota Period	2001 Quota[1]		Reported 2001 Landings through 10/31/01		2001 Overages as of 10/31/01	
	Lb	Kg[2]	Lb	Kg[2]	Lb	Kg[2]
Winter I	1,675,960	752,038	1,692,813	767,847	16,853	7,644
Summer	1,128,832	512,030	1,623,783	736,536	494,951	224,506
Winter II	708,469	321,356	n/a[3]	n/a[3]	n/a[3]	n/a[3]
Total	3,495,261	1,585,424	3,316,596	1,504,383	.....	.....

[1] Reflects quotas as published on September 12, 2001 (66 FR 47413).
[2] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[3] Not applicable.

Table 4 presents the initial 2002 commercial scup quota allocations with and without the research set-aside deduction, and the commercial possession limits being implemented through this final rule.

TABLE 4.— 2002 INITIAL COMMERCIAL SCUP QUOTA AND POSSESSION LIMITS

Period	Percent	TAC[1]	Discards[2]	Commercial Quota		Possesion Limits	
				W/O Research Set-Aside	W/Research Set-Aside	Lb	Kg
Winter I	45.11	4,546,005 (2,062,033)	937,205 (425,109)	3,608,800 (1,636,924)	3,534,153 (1,603,065)	10,000[3]	4,536
Summer	38.95	3,925,225 (1,780,452)	809,225 (367,058)	3,116,000 (1,413,394)	3,051,546 (1,384,158)	n/a*	.....
Winter II	15.94	1,606,370 (728,637)	331,170 (150,216)	1,275,200 (578,421)	1,248,823 (566,456)	2,000	907
Total[4]	100.00	10,077,600 (4,571,122)	2,077,600 (942,383)	8,000,000 (3,628,739)	7,834,522 (3,553,679)		

[1] Total allowable catch in pounds (kilograms in parentheses).
[2] Discard estimates in pounds (kilograms in parentheses).
[3] The Winter I landing limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of the seasonal allocation.
[4] Totals subject to rounding error.
[5] Kilograms in parentheses.
*n/a-Not applicable.

Table 5 presents the initial 2002 commercial scup quota allocations (with the research set-aside deductions), 2001 commercial quota overages for Winter I and Summer periods as of October 31, 2001, and the preliminary adjusted 2002 commercial scup quotas by period.

TABLE 5.— FINAL 2002 COMMERCIAL SCUP QUOTA ALLOCATIONS BY PERIOD

Quota Period	2002 Initial Quota[1]		2001 Quota Overages through 10/31/01		Preliminary 2002 Adjusted Quota	
	Lb	Kg[2]	Lb	Kg[2]	Lb	Kg[2]
Winter I	3,534,153	1,603,065	16,853	7,644	3,517,300	1,595,420
Summer	3,051,546	1,384,158	494,951	224,506	2,556,595	1,159,652
Winter II	1,248,823	566,456	n/a[3]	n/a[3]	1,248,823	566,456
Total	7,834,522	3,553,679	511,804	232,150	7,322,718	3,321,529

[1] Reflects quotas with the research set-aside.
[2] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[3] Not applicable.

To achieve the commercial quotas, this final rule implements a Winter I period (January-April) possession limit of 10,000 lb (4,536 kg), and a Winter II period (November-December) possession limit of 2,000 lb (907 kg). The Winter I possession limit will be reduced to 1,000 lb (453.6 kg) when 80 percent of the commercial quota is attained.

The existing minimum mesh size requirement for the directed scup trawl fishery is also modified by this final rule. The purpose of the modification is to protect recent strong scup year classes, most notably the 1997, 1999 and 2000 year classes. Recruitment of these strong year classes to the fishery is the primary reason why the scup TAL is being increased, even though the target exploitation rate has decreased. NMFS believes it is important to protect these strong scup year classes through gear modifications to ensure that the stock will continue to grow. The otter trawl gear modifications are as follows: For large nets, no more than 25 meshes of 4.5-inch (11.43–cm) mesh in the codend, with at least 100 meshes of 5.0-inch (12.70–cm) mesh forward of the 4.5–inch (11.43–cm) mesh; and for small nets with codends (including an extension) less than 125 meshes, the entire net must have 4.5–inch (11.43–cm) mesh or larger throughout. These minimum mesh sizes are applicable to trawl vessels issued a scup moratorium permit that possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 100 lb (45.4 kg) or more of scup from May 1 through October 31.

In the proposed rule, NMFS explained the reasons for its disapproval of the Council's and Commission Board's recommendation to allow trawl vessels using small mesh and fishing for non-exempt species into the scup Gear Restricted Areas (GRAs) without NMFS-certified observers, provided they use modified trawl nets with an escapement extension (45 meshes of 5.5-inch (13.97-cm) square mesh) between the body of the net and the codend. That explanation is not repeated here.

Black Sea Bass

The FMP established a target exploitation rate for black sea bass of 37 percent for the 2002 fishing year. The TAL associated with the exploitation rate is allocated 49 percent to the commercial sector and 51 percent to the recreational sector by the FMP. The commercial TAL is then allocated on a coastwide basis to four quarterly periods: Quarter 1 (January – March) –38.64 percent; Quarter 2 (April–June)–29.26 percent; Quarter 3 (July–September)–12.33 percent; and Quarter 4 (October–December)–19.77 percent. The recreational TAL is specified as a coastwide harvest limit. The total TAL associated with the exploitation rate required by the FMP is 6.80 million lb (3.08 million kg).

The proposed rule reflected the Council's and Board's recommendation to set-aside 3 percent (204,000 lb; 92,533 kg) of the black sea bass TAL for scientific research activities through the process established by Framework Adjustment 2 to the FMP. Four research projects that utilize black sea bass research quota were recommended for approval by a review committee. These four projects would utilize 76,005 lb (34,475 kg) of the black sea bass research set-aside. The black sea bass TAL has been adjusted in this final rule to reflect this research set-aside. If the NOAA Grants Office disapproves any of these projects, the associated amount of research quota will be restored to the black sea bass TAL through publication of a rule by NMFS.

As a result, a TAL of 6.72 million lb (3.05 million kg) is being implemented through this final rule. This results in a commercial TAL of 3,294,758 lb (1,494,477 kg) and a recreational harvest limit of 3,429,237 lb (1,555,476 kg).

Table 6 presents the final 2001 commercial black sea bass quota for each quarter, reported 2001 landings for Quarter 1, Quarter 2 and Quarter 3 through October 31, 2001, and resultant 2001 quota overages.

TABLE 6.— BLACK SEA BASS PRELIMINARY 2001 COMMERCIAL LANDINGS BY QUARTER AND 2001 OVERAGES

Quarter	2001 Quota[1]		Reported 2001 Landings through 10/31/01		2001 Overages as of 10/31/01	
	Lb	Kg[2]	Lb	Kg[2]	Lb	Kg[2]
Quarter 1	1,168,760	530.141	1,221,802	554,200	53,042	24,059
Quarter 2	645,942	292,994	753,780	341,909	107,838	48,914
Quarter 3	311,902	141,476	318,045	144,263	6,143	2,786
Quarter 4	575,231	260,920	n/a[3]	n/a[3]	n/a[3]	n/a[3]
Total	2,701,835	1,225,532	2,293,627	1,040,372	.....	.....

[1] Reflects quotas as published on September 12, 2001 (66 FR 47413).
[2] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[3] Not applicable.

Table 7 presents the initial 2002 commercial black sea bass quota allocations with and without the research set-aside deduction, and the commercial possession limits being implemented through this final rule.

TABLE 7.— 2002 INITIAL COMMERCIAL BLACK SEA BASS QUOTA AND POSSESSION LIMITS

Quarter	Percent	Commercial Quota		Possession Limits	
		TAL[1] W/O Research Set-Aside	TAL With Research Set-Aside	Lb	Kg
Quarter 1	38.64	1,287,485 (583,993)[2]	1,273,094 (577,466)	7,000	3,175
Quarter 2	29.26	974,943 (442,227)	964,046 (437,284)	2,000	907
Quarter 3	12.33	410,836 (186,352)	406,244 (184,269)	2,000	907
Quarter 4	19.77	658,736 (298,798)	651,374 (295,458)	2,000	907
Total[2]	100.00	3,332,000 (1,511,370)	3,294,758 (1,494,477)		

[1] Total allowable landings in pounds (kilograms in parentheses).
[2] Totals subject to rounding error.

Table 8 presents the initial 2002 commercial black sea bass quota allocations (with the research set-aside deductions), 2001 commercial quota overages for Quarters 1–3 as of October 31, 2001, and the preliminary adjusted 2002 commercial black sea bass quotas by period.

TABLE 8.— FINAL 2002 COMMERCIAL BLACK SEA BASS QUOTA ALLOCATIONS BY QUARTER

Quarter	2002 Initial Quota[1]		2001 Quota Overages through 10/31/01		Preliminary 2002 Adjusted Quota	
	Lb	Kg[2]	Lb	Kg[2]	Lb	Kg[2]
Quarter 1	1,273,094	577.466	53,042	24,049	1,220,052	553,406
Quarter 2	964,046	437,284	107,838	48,914	856,208	388,369
Quarter 3	406,244	184,269	6,143	2,786	400,101	181,483
Quarter 4	651,374	295,458	n/a[3]	n/a[3]	651,374	295,458
Total	3,294,758	1,494,477	.....	.....	3,127,735	1,418,717

[1] Reflects quotas with the research set-aside.
[2] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[3] Not applicable.

To achieve the commercial quotas, this final rule implements possession limits of 7,000 lb (3,175 kg) for Quarter 1 (January–March), and 2,000 lb (907 kg) for Quarters 2–4 (April–December). It also implements measures to protect recent strong year classes of black sea bass. These measures include: (1) An increase in the commercial minimum black sea bass fish size from 10 inches (25.4 cm) to 11 inches (27.94 cm); (2) a modification of the trawl net minimum mesh size such that large trawl nets are required to possess a minimum of 75 meshes of 4.5-inch (11.43-cm) diamond mesh in the codend or, for nets with codends less than 75 meshes, the entire net must have a minimum mesh size of 4.5 inches (11.43 cm) throughout; (3) a decrease in the black sea bass possession limit that triggers the requirement to utilize the black sea bass minimum mesh size from 1,000 lb (453.6 kg) year-round to 500 lb (226.8 kg) during Quarter 1 (January–March), and 100 lb (45.3 kg) during Quarters 2–4 (April–December); and (4) an increase in black sea bass pot and trap escape vent sizes to 2 and 3/8-inch (6.03 cm) circular, 2-inch (5.08 cm) square, or 1 and 3/8-inch (3.49 cm) x 5 and 3/4–inch (14.61 cm) rectangular. The gear modifications are consistent with the commercial minimum fish size of 11 inches (27.94-cm).

In the proposed rule, NMFS specifically sought public comment on the most appropriate sizes for black sea bass escape vents for an 11-inch (27.94 cm) minimum commercial fish size. While a few comments were received on various aspects of this proposal, the information provided does not present a consensus view that could be used as the basis for a change from the proposed measures.

Changes from Proposed Rule

The Council submitted a comment that proposed regulatory text pertaining to the size of escape vents in black sea bass pots and traps should be modified. Specifically, the proposed regulations did not propose to amend the regulations pertaining to the spacing between lathes in wooden traps. The Council clarified that the space between the wooden lathes in a wooden trap should be equal to the shortest space separating the sides of the rectangular escape vent, or 1 and 3/8 inches (3.49 cm). These final regulations reflect this clarification in § 648.144 (b)(2).

Comments and Responses

Eleven comments were received on the proposed measures from commercial fishing industry participants, law firms and organizations representing the commercial fishing industry, a group of environmental advocacy organizations, a state marine fisheries agency, and the Council. All comments received prior to the close of the comment period that directly related to the measures in the

proposed rule were considered in developing the measures contained in this final rule. Several commenters raised issues associated with the management of these species that were beyond the scope of the proposed measures. This final rule does not respond to such comments.

Comment 1: Comments were received both supporting and opposing NMFS' disapproval of the measure that would have allowed vessels fishing with small mesh for non-exempted species access to the GRA's, provided they used modified trawl nets (possessing an escapement extension of 45 meshes of 5.5–inch (13.97–cm) square mesh between the body of the net and the codend). One group of commenters supported the disapproval, noting that it would be premature to relax GRA restrictions on the basis of limited, although promising, gear research, especially without mandatory observer coverage. Three commenters, including the Council, opposed the disapproval. They expressed concern that NMFS did not rely more heavily on the research report on the proposed gear, or on industry advice and experience to support adoption of this measure. One commenter indicated that NMFS should have relied on the research report because it represents the best available science.

Response: In the proposed rule, NMFS clearly articulated its rationale for disapproval of the recommended measure. In summary, the research upon which the recommendation was based, although promising, is too preliminary to justify a universal exemption for all vessels at all times. NMFS notes that the draft report referred to by the commenters states that, "It does not necessarily follow that this solution (modified trawl gear) will work for vessels of all sizes, in all areas or at all times." Two of the projects that will utilize the scup research quota set-aside are intended to test and develop gear modifications to address scup bycatch in small-mesh fisheries. NMFS is hopeful that these projects, and others, will provide more comprehensive information that can be used in developing future management measures to reduce scup discard mortality.

Comment 2: Two commenters, including the Council, suggested that NMFS' disapproval of the exemption to allow small-mesh vessels to fish for non-exempt species in the GRAs when deploying modified trawl gear would prevent the *Loligo* squid fishery from attaining its annual commercial quota. The Council provided 2001 landings data showing that the quarterly quotas have not been attained.

Response: NMFS acknowledges that the *Loligo* quotas allocated to each quarterly period in 2001 have not been attained. NMFS disagrees, however, that it is possible to conclude, based on one year of landings data, that GRAs are the reason quotas are not being attained. GRAs were in place for the 2000 fishing year, though with different boundaries, and commercial landings approached or exceeded the *Loligo* squid commercial quotas that year. In any case, NMFS believes that there is a critical need to protect scup from excessive discard mortality in small-mesh fisheries.

Comment 3: A state marine fisheries agency expressed concern about the magnitude of the 2001 Summer period scup quota overage, and suggested that NMFS should reconsider making the 2002 overage deduction. The commenter acknowledged that the large overage was the result of the higher Summer period quota established by the Commission, but believes that the Commission action was legitimate. The commenter was concerned that the large quota deduction in 2002 will widen the gap between Federal and state permit holders in future years and will eventually result in a minuscule Federal Summer period scup quota.

Response: NMFS shares this concern about divergence between the quotas established by state and Federal management agencies. NMFS has specifically noted concern about the Summer period scup quota on several occasions, and has explained that the FMP requires NMFS to deduct any overages of the commercial quota from that period's allocation for the following year. Under the current FMP, NMFS is legally prevented from taking any action to "reconsider" this requirement through this final rule, due to the requirements of the FMP.

Comment 4: One commenter opposed the proposed black sea bass TAL because it is higher than the TAL recommended by the Black Sea Bass Monitoring Committee. The commenter stated that NMFS did not provide adequate justification for the higher black sea bass TAL and requested that NMFS demonstrate that the higher TAL has a 50–percent chance of attaining the target fishing mortality rate (F = 0.37) for black sea bass.

Response: The commenter referred to a target F rate of F=0.37. In fact, the FMP does not specify a target F rate. Rather, it specifies a target exploitation rate of 37 percent, because the data available for this fishery cannot support an estimate of F. The TAL is established using the target exploitation rate because it can be calculated using data that are available for this fishery (i.e., the NEFSC spring survey abundance index). Similarly, the quality of the assessment data for this species does not allow for a precise estimate of the probability of achieving the target exploitation rate.

The increased TAL is directly related to the other conservation measures being enacted to protect recent strong year classes of black sea bass. These include: (1) An increase in the minimum fish size from 10 inches (25.4 cm) to 11 inches (27.9 cm); (2) a 1/2–inch (1.27–cm) increase in the minimum trawl mesh size; (3) an increase in escape vent sizes for black sea pots and traps; and (4) a decrease in the possession limit that triggers the requirement to utilize the black sea bass minimum mesh size from 1,000 lb (453.6 kg) year-round to 500 lb (226.8 kg) in Quarter 1 and 100 lb (45. 3 kg) in Quarters 2 through 4. NMFS believes it is reasonable to anticipate that the conservation benefits associated with these gear changes will offset the increase in the TAL.

NMFS anticipates that a significant number of additional small fish (< 11 inches (27.9 cm)) will escape, grow and reproduce as a result of these measures. The information that is available indicates that a minimum fish size of 11 inches (27.9 cm) corresponds to the L_{25} (length at which 25 percent of fish are retained) associated with the increased minimum mesh size in the trawl fishery, and the L_{50} (length at which 50 percent of fish are retained) associated with the increase in escape vent sizes. Also, a recent study indicates substantive changes in selectivity using a rectangular vent size similar to that recommended by the Council.

NMFS acknowledges that, if overall fishing effort and exploitation are high, any increase in spawning stock biomass as a result of the gear changes would not be realized. However, relative exploitation indices in the black sea bass fishery have significantly declined since 1998. The combination of this trend of decreasing exploitation and the conservative gear modifications support the higher TAL.

NMFS is also giving consideration to the importance of maintaining a consistent TAL between state and Federal waters. Past instances of divergent TALs, such as that noted in Comment 3, have weakened the effectiveness of the management program. NMFS prefers, when possible, to implement measures that are consistent with those enacted by the states.

Comment 5: One commenter wrote in support of the proposed black sea bass possession limits of 7,000 lb (3,175 kg) for Quarter 1, and 2,000 lb (907 kg) for Quarters 2-4. The commenter suggested that the higher trip limits in Quarters 2–4 were necessary to provide flexibility to the states, which are considering whether to establish more restrictive landing limits. Two other commenters were opposed to the proposed black sea bass possession limits, and recommended adoption of the possession limits recommended by the Black Sea Bass Monitoring Committee: 7,000 lb (3,175 kg) in Quarter 1; 1,000 lb (453.6 kg) in Quarter 2; 2,500 lb (226.8 kg) in Quarter 3; and 750 lb (340.2 kg) in Quarter 4. One of the commenters opposed to the proposed landing limits contended that the higher limits would create a derby-style fishery, wreak havoc with prices, and result in a early closures of the quarterly fisheries.

Response: The establishment of black sea bass possession limits has been a contentious issue since the FMP was first fully implemented in 1996. Through this final rule, NMFS is implementing the possession limits that were recommended by the Council at its August 2001 meeting. These possession limits were chosen as an appropriate balance between the economic concerns expressed by industry members, who sought sufficient landings to make a trip economically viable, and the objective of maintaining quota availability over the entire quota period. The Commission's Black Sea Bass Board tabled its motion on possession limits for further discussion. The higher Federal limits imposed through this final rule facilitate the implementation by the states of more restrictive landings limits, and provide the states with flexibility in designing management measures appropriate to their fisheries.

Comment 6: One commenter opposed the increase in black sea bass escape vent sizes, stating that wooden pots and wire pots would have to be modified at great cost as a result of the regulation. The commenter felt that the management measure would never pass a cost-benefit analysis.

Response: Black sea bass are over-exploited and at a low biomass level. However, recruitment indices indicate that exceptionally large year classes were produced in 1999 and 2000. Preliminary results indicate a poor 2001 year class. Therefore, the 1999 and 2000 black sea bass year classes must be protected in order to allow for these fish to grow to maturity so they can reproduce and contribute to stock rebuilding. As a result, the commercial minimum fish size is being increased to 11 inches (27.94 cm). It is necessary when increasing the minimum fish size to implement measures that will modify the gear used in the fishery appropriately. Otherwise, fish smaller than the minimum size will suffer unnecessary mortality which would reduce the effectiveness of the minimum size measure. The increase in the vent sizes is one such measure.

The Council analysis concluded that the cost of replacing escape vents would be minimal and indicated that some industry members are already using escape vents consistent with the new requirement. It is expected that these measures will ultimately produce both short and long-term benefits as the black sea bass stock continues to rebuild and TALs are correspondingly increased.

Comment 7: One commenter supported the proposed escape vent sizes for black sea bass pots and traps. Another commenter supported the proposed sizes for circular (2–3/8 inch (6.03–cm)) and square (2–inch (5.08–cm)) escape vents, but was strongly opposed to the proposed rectangular escape vent size (1–3/8 x 5–3/4 inches (3.49 x 14.60 cm)). The commenter stated that, according to a 1994 study, the proposed rectangular escape vent size would allow 50-percent more 11–inch (27.94–cm) fish to escape than a 1–1/4 x 5-3/4–inch (3.175 x 14.60-cm) escape vent. The commenter was also opposed to any increase beyond 1–1/4 inches in the separation of lathes in wooden pots. Another commenter suggested requiring a 2–inch (5.08–cm) mesh panel in the entire backside of the black sea bass traps. The Council also commented, as noted earlier, that the regulations associated with lathe spacing in wooden pots must also be modified.

Response: The Council initially adopted the 1–3/8 x 5–3/4–inch (3.49 x 14.60–cm) rectangular black sea bass escape vent size at the suggestion of industry members that attended the August 2001 Council meeting. In the proposed rule, NMFS specifically requested additional comment from industry members concerning the appropriate sizes for escape vents for an 11–inch (27.94–cm) minimum fish size. NMFS received few comments on this issue, and does not believe there is a basis to modify the proposed measures. NMFS is making the lathe spacing change recommended by the Council for consistency.

Comment 8: One commenter indicated that fishermen will not benefit from an 11-inch (27.94–cm) minimum black sea bass fish size because there will be fewer small fish to sell and prices for larger fish will decrease. The commenter disputed the conclusion in the Initial Regulatory Flexibility Analysis (IRFA) that vessels are likely to experience increased revenues in 2002 compared to 2001 because the commenter believes that the market for black sea bass has been severely damaged by fishery closures and reopenings.

Response: It is not possible to predict accurately the direction and magnitude of price changes for large fish that may result as a consequence of this rule. Therefore, the IRFA relied upon prices from 2000. The IRFA concluded that vessels will land more medium-sized fish and fewer smaller-sized fish as a result of increasing the minimum fish size. Because larger fish have historically commanded a higher price per pound, the IRFA concluded that fishers would benefit from the increase in minimum fish size. The overall conclusion in the IRFA that vessels would experience increased revenues in 2002 is based upon the fact that the commercial black sea bass quota is being increased. It is possible that the commenters point could prove to be true. However, if it does, it would not change the selection of the preferred action because increasing the minimum fish size and the associated gear modifications are necessary to protect recent strong year classes and, also, to support the recommended black sea bass TAL.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This action establishes annual quotas and related management measures for the summer flounder, scup and black sea bass fisheries. If implementation of the quota provisions and other management measures is delayed, NMFS will be prevented from carrying out its function of preventing overfishing of these three species. The fisheries covered by this action will begin making landings on January 1, 2002. If a delay in effectiveness is required, and a quota were to be harvested during a delayed effectiveness period, the lack of effective quota specifications would prevent NMFS from closing the fishery. This could result in large overages that would have distributional effects on other quota periods and might potentially disadvantage some gear sectors. Therefore, with the exception of the sections pertaining to gear modifications, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553

(d)(3) to waive the 30–day delayed effectiveness period for the quotas and other management measures, and for the closures of the fisheries in the States of Delaware and Maine. In order to provide sufficient time for industry participants to make the gear modifications required by §§ 648.14(a)(92), 648.14(u)(1), 648.123(a)(1), 648.143 (a), 648.144 (a)(1)(i), 648.144 (b)(2) and 648.145 (d), NMFS is delaying the effectiveness of these measures for 60 days following the date of publication in the **Federal Register**.

This rule does not contain policies with federalism implications, as that term is defined in Executive Order 13132.

The Council and NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this action. The FRFA includes comments on the IRFA, responses contained herein, and a summary of the analyses done in support of these specifications. A copy of the analysis is available from the Regional Administrator (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here. A summary of the FRFA follows:

A description of the reasons why action by the agency is being taken and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Public Comments

Eleven comments were received on the measures contained in the proposed rule. Comments did not refer specifically to the IRFA, but several were related to economic impacts on small entities (see responses to comments 5, 6 and 8 in the preamble of this final rule). No changes were made to the measures outlined in the proposed rule as a result of these comments.

Number of Small Entities

The Council estimates that the proposed 2002 quotas and management measures could affect 1,969 vessels with a Federal summer flounder, scup, and/or black sea bass permit, as of September 5, 2000. However, the more immediate impact of this rule will likely be felt by the 1,038 vessels that actively participated in these fisheries in 2000 (as demonstrated by having landed these species). These 1,038 vessels include vessels holding only state permits.

Minimizing Significant Economic Impact on Small Entities

In the FRFA, NMFS analyzed the measures being implemented in this action. Economic impacts are being minimized to the extent practicable with the measures being implemented in this final rule, while being consistent with the target fishing mortality rates or target exploitation rates specified in the FMP. The FRFA analysis compared the effects of the 2002 measures, following adjustment for known overages at the time of the analysis, to 2000 landings, the most recent year for which complete data are available. Three alternative combinations of summer flounder, scup and black sea bass landings (commercial and recreational) were evaluated (see Table 9 below).

TABLE 9.—COMPARISON OF THE ALTERNATIVE COMBINATIONS OF COASTWIDE COMMERCIAL QUOTA AND RECREATIONAL HARVEST LIMITS REVIEWED. "FLK" IS SUMMER FLOUNDER.

	Commercial Quota	Recreational Harvest Limit
Quota Alternative 1 (Preferred Alternative)		
FLK Preferred Alternative	14,578,288	9,720,000
Scup Preferred Alternative	8,000,000	2,770,000
Black Sea Bass Preferred Alternative	3,332,000	3,470,000
Quota Alternative 2 (Status Quo, Most Restrictive)		
FLK Status Quo	10,747,535	7,160,000
Scup Status Quo	4,444,600	1,770,000
Black Sea Bass Status Quo	3,024,770	3,150,000
Quota Alternative 3 (Least Restrictive)		
FLK Non-Selected Alternative 3	20,878,658	13,900,000
Scup Non-Selected Alternative 3	9,530,000	3,200,000
Black Sea Bass Non-Selected Alternative 3	3,970,960	4,130,000

The measures implemented by this rule would likely result in revenue increases for the 1,038 commercial vessels expected to be impacted by this rule. Alternative 3 would have established quotas higher than those established by this rule for each of the three species. This alternative would likely result in revenue increases to the 1,038 commercial vessels expected to be impacted under this rule, greater than the expected revenue increases under the preferred alternative. However, alternative 3 was not selected for implementation because these quotas are too risk prone in terms of achieving the FMP's annual target F levels or target exploitation rates.

The impacts of the three alternatives on recreational fishers were evaluated by comparing the recreational harvest limits to the recreational landings in 2000, the most recent year for which complete data are available. For both summer flounder and scup, any of the three alternatives considered would require more restrictive management measures to be established, because landings in 2000 exceeded even the highest recreational harvest limit in Alternative 3. For black sea bass, Alternative 3 may have allowed management measures to be less restrictive because Alternative 3 represents a 14–percent increase in the recreational harvest limit. However, black sea bass Alternative 2 establishes a harvest limit nearly identical to the 2000 recreational landings level, so it is not expected to have negative impacts. The effect of more restrictive recreational measures cannot be estimated, but could affect demand for party/charter boat trips. However, party/charter activity in the 1990s has remained relatively stable, so the effects are expected to be minimal.

The modification of the level at which the scup Winter I possession limit is decreased from 10,000 lb (4,536 kg) to

1,000 lb (453 kg) is modified slightly by this rule. Previously, the possession limit was decreased when 75 percent of the quota allocated to the Winter I period was projected to be harvested; this rule modifies the level to 80 percent. This change is anticipated to have a minimal impact on the fishery.

The gear modifications required for participants in the scup and black sea bass fisheries do not modify the amount of quota allocated to the fishery, and therefore, are not projected to impact revenues directly. The modifications themselves will have associated costs, estimated at $775 to $1,354 per net for the trawl gear requirement. The costs associated with changes to the vent sizes in pot and trap gear are projected to be minimal.

The change to the minimum fish size for black sea bass landed by the commercial fishery is projected to generate a benefit to fishers, based on the fact that fishers received a higher price per pound for fish in the larger size category in 2000.

This rule does not establish a research quota set-aside for summer flounder, but does establish such set-asides for scup and black sea bass. The existence of the set-asides does not alter the total revenues in any of the three fisheries, since the fish are projected to be harvested either by the commercial and recreational fisheries, or through research-related activity.

In summary, the commercial quotas and recreational harvest limits contained in this final rule will result in increased landings and revenues for each of the species, most notably for summer flounder and scup, yet still achieve the fishing mortality and exploitation targets specified in the FMP. While the commercial quotas and recreational harvest limits specified in Alternative 3 would provide for even larger increases in landings and revenues, they would not achieve the fishing mortality and exploitation targets specified in the FMP. The possession limits for scup and black sea bass that are being implemented balance the need to provide for economically viable fishing trips with the need to ensure an equitable distribution of the quota over the entire period. The gear modifications in the black sea bass fishery (increased minimum trawl mesh size and pot/trap escape vents) will impose some initial compliance costs, but are needed to complement the increase in minimum commercial fish size and the increase in the black sea bass TAL. Similarly, the modification to scup trawl nets will impose initial compliance costs, but will allow for additional escapement of undersized fish and provide for future increases in exploitable biomass. The economic effects of the existing GRAs will not change as a result of this proposed rule. The disapproved alternative that would allow small-mesh vessels to fish for non-exempt species in the GRAs was not selected because the research supporting the alternative was deemed by NMFS to be too preliminary, and therefore, causative of an unacceptable risk to increased juvenile scup mortality. Finally, the revenue decreases associated with the research set-asides are expected to be minimal, and are expected to yield important long-term benefits associated with improved data. It should also be noted that fish harvested under the research set-asides would be sold. As such, total gross revenue to the industry would not decrease if the research set asides are utilized.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 18, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraphs (a)(92) and (u)(1) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(92) Fish for, catch, possess, land, or retain black sea bass in or from the EEZ north of 35°15.3 N. lat. (the latitude of Cape Hatteras Light, NC, to the U.S.-Canadian border) in excess of the amount specified in § 648.145 (a).

* * * * *

(u) * * *

(1) Fish for, catch, possess, land, or retain black sea bass in excess of the amount specified in § 648.144(a)(1)(i)(i.e. 500 lb (226.8 kg) from January 1 through March 31, or 100 lb (45.4 kg) from April 1 through December 31), unless the vessel meets the minimum mesh requirement specified in § 648.144 (a).

* * * * *

3. In § 648.123, paragraph (a)(1) is revised to read as follows:

§ 648.123 Gear restrictions.

(a) * * *

(1) *Minimum mesh size.* The owners or operators of otter trawlers who are issued a scup moratorium permit and who possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 100 lb (45.4 kg) or more of scup from May 1 through October 31, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh for no more than 25 continuous meshes forward of the terminus of the codend, and with at least 100 continuous meshes of 5.0-inch (12.7–cm) mesh forward of the 4.5-inch (11.43–cm) mesh. For trawl nets with codends (including an extension) less than 125 meshes, the entire trawl net must have a minimum mesh size of 4.5 inches (11.43 cm) throughout the net. Scup on board these vessels shall be stored separately and kept readily available for inspection.

* * * * *

4. In § 648.143, paragraph (a) is revised to read as follows:

§ 648.143 Minimum sizes.

(a) The minimum size for black sea bass is 11 inches (27.94 cm) total length for all vessels issued a moratorium permit under § 648.4 (a)(7) that fish for, possess, land or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35′ 15.3 N. Lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canadian border. The minimum size may be adjusted for commercial vessels pursuant to the procedures in § 648.140.

* * * * *

5. In § 648.144, paragraph (a)(1)(i) and (b)(2) are revised to read as follows:

§ 648.144 Gear restrictions.

(a) * * *

(1) * * *

(i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 500 lb (226.8 kg) or more of black sea bass from January 1 through March 31, or 100 lb (45.4 kg) or more of black sea bass from April 1 through December 31, must fish with nets that have a minimum mesh size of 4.5 inch (11.43-cm) diamond mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with less than 75 meshes, the entire net must have a minimum mesh size of 4.5 inch (11.43-cm) diamond mesh throughout.

* * * * *

(b) * * *

(2) All black sea bass traps or pots must have an escape vent placed in a

lower corner of the parlor portion of the pot or trap that complies with one of the following minimum sizes: 1.375 inches (3.49 cm) by 5.75 inches (14.61 cm); or a circular vent 2.375 inches (6.03 cm) in diameter; or a square vent with sides of 2 inches (5.08 cm), inside measure; however, black sea bass traps constructed of wooden lathes may have instead an escape vent constructed by leaving a space of at least 1.375 inches (3.49 cm) between one set of lathes in the parlor portion of the trap. These dimensions for escape vents and lathe spacing may be adjusted pursuant to the procedures in § 648.140.

* * * * *

6. In § 648.145, paragraph (d) is revised to read as follows:

§ 648.145 Possession limit

* * * * *

(d) Owners or operators of otter trawl vessels issued a moratorium permit under § 648.4 (a)(7) and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh requirements specified in § 648.144(a) and that are not stowed in accordance with § 648.144 (a)(4), may not retain more than 500 lb (226.8 kg) of black sea bass from January 1 through March 31, or more than 100 lb (45.4 kg) of black sea bass from April 1 through December 31. Black sea bass on board these vessels shall be stored so as to be readily available for inspection in a standard 100–lb (45.4 kg) tote.

[FR Doc. 01–31637 Filed 12–19–01; 4:00 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 247
Wednesday, December 26, 2001

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AB71

Treasury Rate Direct Loan Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: In fiscal year 2001, Congress provided funding to establish a Treasury rate direct loan program to address the backlog of qualified loan applications for insured municipal rate electric loans from RUS. RUS administered the Treasury rate loan program in a manner substantially the same as it administered the municipal rate program under a Notice of Funding Availability (NOFA) published in the **Federal Register** at 65 FR 80830 on December 22, 2000. Title III of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2002 authorizes a direct Treasury rate electric loan program of $750 million for FY 2002. RUS is proposing to amend its regulations to establish rules and regulations to administer the Treasury rate direct loan program.

In the final rule section of this **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a non-controversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a document will be published withdrawing the direct final rule and all public comments received will be addressed in a subsequent final rule. Any parties interested in commenting on this proposed action should do so at this time.

DATES: Comments on this proposed action must be received on or before January 25, 2002.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1522, Washington, DC 20250–1522. RUS suggests a signed original and three copies of all comments (7CFR 1700.4). All comments received will be made available for public inspection at room 4030, South Building, Washington, DC, between 8 a.m. and 4 p.m. (7CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Robert O. Ellinger, Chief, Policy Analysis and Loan Management Staff, Rural Utilities Service, Electric Program, Room 4041 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250–1560, Telephone: (202) 720–0424, FAX (202) 690–0717, E-mail *rellinge@rus.usda.gov*.

SUPPLEMENTARY INFORMATION: See the Supplementary Information provided in the direct final rule located in the final rule section of this **Federal Register** for the applicable supplementary information on this action.

Dated: December 18, 2001.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 01–31575 Filed 12–21–01; 8:45 am]

BILLING CODE 3410–15–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Semiannual Regulatory Agenda; Correction

AGENCY: National Credit Union Administration (NCUA).

ACTION: Semiannual regulatory agenda; correction.

SUMMARY: The following information was inadvertently omitted from NCUA's semiannual regulatory agenda, which was published on Monday, December 3, 2001 (66 FR 62718).

FOR FURTHER INFORMATION CONTACT: Sheila A. Albin, Associate General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540.

Correction: In the semiannual regulatory agenda Part LVIII, beginning on page 62718 in the issue of December 3, 2001, make the following correction. On page 62723, in the third column, add the following sequence numbers 4534 and 4535 following sequence number 4533.

Completed Actions:

4534. Requirements for Insurance (Subpart B)

Timetable:

Action	Date	FR Cite
Duplicate of RIN 3313–AC14 (Completed in Spring 2001 Agenda).	04/30/01	

RIN: 3133–AC55.

4535. Nondiscrimination in Advertising

Priority: Substantive, Nonsignificant. *Legal Authority:* 42 USC 3604(c). *CFR Citation:* 12 CFR 701.31(d). *Legal Deadline:* None. *Abstract:* Update the NCUA regulations for advertising and posting notice of nondiscrimination in real estate-related lending.

Timetable:

Action	Date	FR Cite
NPRM	04/26/01	66 FR 20945
NPRM Comment Period End	06/25/01	
Final Action	09/19/01	66 FR 48205
Final Action Effective.	10/19/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paul M. Peterson, Staff Attorney, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Phone: 703 518–6555, Fax: 703–518–6569, Email: *ppeterson@ncua.gov*

RIN: 3133–AC58.

Dated: December 18, 2001.

Hattie M. Ulan,

Special Counsel to the General Counsel.

[FR Doc. 01–31571 Filed 12–21–01; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–382–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 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 Boeing Model 767–200 series airplanes. This proposal would require repetitive inspections of the side panels of the nose wheel well for broken rivets and replacement of any broken rivets with bolts. This proposal would also require follow-on inspections of adjacent areas for cracks or broken rivets, whenever two or more adjacent broken rivets are found; repair of any cracks; and replacement of any broken rivets with bolts. Finally, this proposal provides for the optional replacement of all rivets in the affected area with bolts, which would terminate the repetitive inspections. This action is necessary to detect and correct broken rivets in the nose wheel well side panels and top panel, which could impair the function of the nose landing gear and cause fatigue cracks in the side panel and top panel webs of the nose wheel well, which could result in rapid cabin depressurization during flight. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 11, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2000–NM–382–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–382–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John Craycraft, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2782; fax (425) 227–1181.

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 action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 2000–NM–382–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 Number 2000–NM–382–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that 155 broken rivets were found in the side and top panels of the nose wheel well on a Boeing Model 767–200 airplane. Analysis indicates that pressurization loads on the side panel and top panel webs results in high prying loads on these rivets. Broken rivets in the side and top panels of the nose wheel well, if not corrected, could impair the function of the nose landing gear and cause fatigue cracks in the side and top panel webs of the nose wheel well, which could result in rapid cabin depressurization during flight.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–53A0090, Revision 1, dated September 14, 2000, which describes procedures for repetitive inspections of the nose wheel well side panels for broken rivets and replacement of any broken rivets with bolts. The service bulletin also describes procedures for follow-up inspections of adjacent areas for broken rivets and cracks, whenever two or more adjacent broken rivets are found; repair of any cracks; and replacement of any broken rivets with bolts. Finally, the service bulletin describes procedures for the optional replacement of all rivets in the affected area with bolts, which eliminates the need for repetitive inspections.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed rule would require accomplishment of the actions specified in the service bulletin described previously, except as described below.

Differences Between Service Bulletin and Proposed Rule

Operators should note that the service bulletin specifies that if broken rivets are found during a secondary inspection, they must be repaired, and that repair data should be requested from the Boeing Company. However, this proposed rule would require the repair to be accomplished per a method

approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Cost Impact

There are approximately 62 airplanes of the affected design in the worldwide fleet. The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, 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 $5,520, or $120 per airplane, per inspection cycle.

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 proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would 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 and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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:

Boeing: Docket 2000–NM–382–AD.

Applicability: Model 767 series airplanes, line numbers 1 through 62, 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 (d) 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 broken rivets in the nose wheel well side panels and top panel, which could impair the function of the nose landing gear and cause fatigue cracks in the nose wheel well side panel and top panel webs, which could result in rapid cabin depressurization during flight, accomplish the following:

Initial and Repetitive Inspections

(a) Within 18 months or 3,000 flight cycles after the effective date of this AD, whichever occurs first: Perform a detailed visual inspection of the nose wheel well side panels for broken rivets, in accordance with Boeing Service Bulletin 767–53A0090, Revision 1, dated September 14, 2000.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: Inspections, replacement, and repairs performed prior to the effective date of this AD in accordance with Boeing Service Bulletin 767–53A0090, dated August 3, 2000, are considered acceptable for compliance with the applicable actions specified in this amendment.

(1) If no broken rivets are detected: No further action is required as part of the initial inspection. Repeat the inspection at intervals not to exceed 18 months or 3,000 flight cycles, whichever occurs first.

(2) If broken rivets are detected, but they do not include two or more adjacent rivets: Prior to further flight, replace the broken rivets with bolts in accordance with the service bulletin. Repeat the inspection at intervals not to exceed 18 months or 3,000 flight cycles, whichever occurs first.

(3) If two or more adjacent broken rivets are detected: Prior to further flight, perform a secondary inspection as specified in paragraph (c) of this AD.

Optional Terminating Action

(b) Replacement of all the rivets with bolts in accordance with Figure 5 of Boeing Service Bulletin 767–53A0090, Revision 1, dated September 14, 2000, terminates the repetitive inspection required by paragraph (a) of this AD.

Secondary Inspections

(c) If two or more adjacent broken rivets are found during any inspection required by paragraph (a) of this AD: Prior to further flight, perform a detailed visual inspection of the side panels and the top panel of the nose wheel well for cracks or broken rivets, in accordance with Boeing Service Bulletin 767–53A0090, Revision 1, dated September 14, 2000.

(1) If no cracks or additional broken rivets are found: Prior to further flight replace all of the rivets with bolts in accordance with Figure 5 of the service bulletin. This terminates the repetitive inspections required by paragraph (a) of this AD.

(2) If any cracks or additional broken rivets are found: Prior to further flight, repair the cracks and replace all of the rivets, per a method approved by the Manager, Seattle Aircraft Certification Office, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. This terminates the repetitive inspections required by paragraph (a) of this AD.

Alternative Methods of Compliance

(d) 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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) 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.

Issued in Renton, Washington, on December 17, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–31558 Filed 12–21–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112991–01]

RIN 1545–AY82

Credit for Increasing Research Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the computation of the research credit under section 41(c) and the definition of qualified research under section 41(d). In addition, this document contains proposed regulations describing when computer software that is developed by (or for the benefit of) a taxpayer primarily for the taxpayer's internal use is excepted from the internal-use software exclusion contained in section 41(d)(4)(E). These proposed regulations reflect changes to section 41 made by the Tax Reform Act of 1986, the Revenue Reconciliation Act of 1989, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Tax and Trade Relief Extension Act of 1998, and the Tax Relief Extension Act of 1999. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments and requests to speak (with outlines of oral comments) at the public hearing scheduled for March 27, 2002 must be received no later than March 6, 2002.

ADDRESSES: Send submissions to: CC:IT&A:RU (REG–112991–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:IT&A:RU (REG–112991–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.gov/tax_regs/reglist.html. The public hearing will be held in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lisa J. Shuman, 202–622–3120; concerning submissions of comments and the hearing, LaNita VanDyke, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this proposed regulation have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and assigned OMB Control Number 1545–1625. 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 control number assigned by OMB.

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

Background

On January 3, 2001, Treasury and the IRS published in the **Federal Register** (66 FR 280) final regulations (TD 8930) relating to the computation of the credit for increasing research activities (the research credit) under section 41(c) and the definition of qualified research under section 41(d). In response to taxpayer concerns regarding TD 8930, on January 31, 2001, Treasury and the IRS published Notice 2001–19 (2001–10 I.R.B. 784), announcing that Treasury and the IRS would review TD 8930 and reconsider comments previously submitted in connection with the finalization of TD 8930. Comments were requested on all aspects of TD 8930 with specific comments requested on whether modifications should be made to the documentation requirement contained in § 1.41–4(d).

Notice 2001–19 also provided that, upon the completion of this review, Treasury and the IRS would announce changes to the regulations, if any, in the form of proposed regulations. Notice 2001–19 stated that TD 8930 would be revised so that the provisions of the regulations, including any changes to TD 8930, would be effective no earlier than the date when the completion of this review was announced, except that the provisions relating to internal-use computer software (including any revisions) generally would be applicable for taxable years beginning after December 31, 1985.

Explanation of Provisions

This document amends 26 CFR part 1 to provide additional rules under section 41. Section 41 contains the rules for the research credit. After consideration of the statute and legislative history, the court decisions, TD 8930 and the comments previously submitted in connection with the finalization of TD 8930, and the comments submitted in response to Notice 2001–19, Treasury and the IRS have revised TD 8930 to provide rules regarding:

(i) The requirement in section 41(d)(1)(B)(i) that qualified research be "undertaken for the purpose of discovering information which is technological in nature";

(ii) The requirement in section 41(d)(1)(C) that qualified research be research "substantially all of the activities of which constitute elements of a process of experimentation";

(iii) The type of computer software constituting software "which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer" for purposes of section 41(d)(4)(E); and

(iv) the documentation required to substantiate the research credit. These and other changes to TD 8930 are discussed below.

I. Research That Is Undertaken for the Purpose of Discovering Information Which Is Technological in Nature

Section 41(d)(1)(B)(i) requires that qualified research must be "undertaken for the purpose of discovering information which is technological in nature." TD 8930 provided that "research is undertaken for the purpose of discovering information only if it is undertaken to obtain knowledge that exceeds, expands, or refines the common knowledge of skilled

professionals in a particular field of science or engineering" and that "information is technological in nature if the process of experimentation used to discover such information fundamentally relies on principles of the physical or biological sciences, engineering, or computer science."

With respect to the phrase "undertaken for the purpose of discovering information," commentators noted that § 1.174–2(a)(1) imposes a requirement that a taxpayer's activities must be "intended to discover information" in order to give rise to research and experimental expenditures under section 174, and that section 41(d)(1)(A) incorporates this requirement because an expenditure must qualify under section 174 in order to give rise to the research credit. Commentators argued that the enactment of the section 41(d)(1)(B) "undertaken for the purpose of discovering information" language should not necessarily be viewed as imposing a different standard than that imposed under section 174 because the section 174 "intended to discover information" language was promulgated in regulations after section 41(d)(1)(B) was enacted.

Commentators also stated that the requirement that qualified research be "undertaken for the purpose of discovering information which is technological in nature" reflects Congress' concern that the research credit had been claimed for non-technological research. These commentators note that in 1984 hearings to evaluate the operation of the research credit prior to the changes of the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, 2186 (the 1986 Act), members of the Subcommittee on Oversight of the House Committee on Ways and Means and Treasury officials cited research credit claims by fast food restaurants, fashion designers and hair stylists as examples of activities that should not be credit eligible. These commentators argue that the 1986 Act modifications to the research credit were intended to target research that relies upon principles of the physical or biological sciences, engineering, or computer science.

Based upon their review of these comments, the statute and legislative history, Treasury and the IRS have determined that the definition of qualified research set out in TD 8930 does not fully address Congress' concerns regarding the importance of research activities to the U.S. economy. Accordingly, Treasury and the IRS have eliminated in these proposed regulations the requirement that qualified research must be undertaken to obtain knowledge that exceeds, expands, or refines the common knowledge of skilled professionals in a particular field of science or engineering. Rather, Treasury and the IRS believe that the requirement that qualified research be "undertaken for the purpose of discovering information which is technological in nature" is intended to distinguish technological research, which may qualify for the research credit, from non-technological research, which does not.

When the research credit rules were amended by the 1986 Act, Congress explained the requirement in section 41(d)(1)(B)(i) as follows:

> [t]he determination of whether the research is undertaken for the purpose of discovering information that is technological in nature depends on whether the process of experimentation utilized in the research fundamentally relies on principles of the physical or biological sciences, engineering, or computer science/3/—in which case the information is deemed technological in nature—or on other principles, such as those of economics—in which case the information is not to be treated as technological in nature. For example, information relating to financial services or similar products (such as new types of variable annuities or legal forms) or advertising does not qualify as technological in nature.

H.R. Conf. Rep. No. 99–841, at II–71 (1986) (footnote omitted). This explanation of section 41(d)(1)(B)(i) focuses on the distinction between information derived from a process of experimentation that fundamentally relies on principles of physical or biological sciences, engineering or computer science, and information derived by other means. This and other changes to the research credit by the 1986 Act were driven by Congressional concerns that the research credit had been applied "too broadly" and that "[m]any taxpayers claiming the credit were not in industries that involved high technology or its application in developing new and improved products or methods of production." H.R. Rep. No. 99–426, at 177–78; S. Rep. No. 99–313, at 694–95. The examples provided by Congress illustrate this point. Information relating to financial services, variable annuities, legal forms and advertising all involve information derived from non-technological research. This distinction between technological and non-technological research is further emphasized by other changes made to the definition of qualified research by the 1986 Act. For example, section 41(d)(4)(D) specifically excludes from the definition of qualified research certain non-technical activities including efficiency surveys, activities relating to management function or technique, market research testing, routine data collection and quality control testing. Similarly, section 41(d)(3)(B) generally provides that if the purpose of research relates to style, taste, cosmetic or seasonal design factors, then that research cannot constitute qualified research. The 1986 Act also expanded the list of social science exclusions contained in section 41(d)(4)(G).

In contrast, the 1986 legislative history does not indicate that section 41(d)(1)(B)(i) was enacted to impose a scientific discovery requirement. The legislative history does not contain a definition of the term *discovery*. The footnote 3 referenced in the above quoted legislative history does state:

> Research does not rely on the principles of computer science merely because a computer is employed. Research may be treated as undertaken to discover information that is technological in nature, however, if the research is intended to expand or refine existing principles of computer science.

H.R. Conf. Rep. No. 99–841, at II–71, n.3 (1986). This footnote, however, does not set forth a rule of general application, but instead merely illustrates a clear example of research satisfying the requirement that qualified research be technological in nature.

For all of these reasons, Treasury and the IRS have concluded that there should be no "discovery" requirement in the research credit regulations separate and apart from that already required under § 1.174–2(a)(1), which states, in part:

> Expenditures represent research and development costs in the experimental or laboratory sense if they are for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product. Uncertainty exists if the information available to the taxpayer does not establish the capability or method for developing or improving the product or the appropriate design of the product.

Accordingly, these proposed regulations do not retain from TD 8930 the requirement that qualified research must be undertaken to obtain knowledge that exceeds, expands, or refines the common knowledge of skilled professionals in a particular field of science or engineering. Instead, the proposed regulations repeat the requirement from § 1.174–2(a)(1) by stating that research is undertaken for the purpose of discovering information if it is intended to eliminate uncertainty concerning the development or improvement of a business component. Uncertainty, for purposes of this requirement, exists if the information

available to the taxpayer does not establish the capability or method of developing or improving the business component, or the appropriate design of the business component.

These proposed regulations expand on the definition of *technological in nature* set out in TD 8930. As under TD 8930, information is technological in nature if the process of experimentation used to discover such information fundamentally relies on principles of the physical or biological sciences, engineering, or computer science. As in TD 8930, these proposed regulations clarify the definition of technological in nature by stating that a taxpayer may employ existing technologies and may rely on existing principles of the physical or biological sciences, engineering, or computer science to satisfy this requirement.

TD 8930 contained a patent safe harbor providing that a taxpayer is conclusively presumed to have obtained knowledge that exceeds, expands, or refines the common knowledge of skilled professionals in the relevant field of science or engineering, if that taxpayer was awarded a patent (other than a patent for design issued under the provisions of 35 U.S.C. 171) for the business component. These proposed regulations contain a similar rule that conforms to the underlying requirement for credit eligibility in section 41(d)(1)(B)(i) that research must be undertaken for the purpose of discovering information that is technological in nature. Accordingly, these proposed regulations provide that a taxpayer is conclusively presumed to have discovered information that is technological in nature that is intended to eliminate uncertainty concerning the development or improvement of a business component if that taxpayer was awarded a patent (other than a patent for design issued under the provisions of 35 U.S.C. 171) for the business component.

II. Process of Experimentation

Together with the requirements of section 41(d)(1)(A) and (B), section 41(d)(1)(C) provides that qualified research means research substantially all of the activities of which constitute elements of a process of experimentation related to a new or improved function, performance, or reliability or quality. In TD 8930, Treasury and the IRS clarified how the process of experimentation required by section 41(d)(1)(C) differs from research and development in the experimental or laboratory sense required by § 1.174–2(a). Specifically, TD 8930 provided that a process of experimentation is a process to evaluate more than one alternative designed to achieve a result where the capability or method of achieving that result is uncertain at the outset, but does not include the evaluation of alternatives to establish the appropriate design of a business component when the capability and method for developing or improving the business component are not uncertain. Several commentators objected to any distinction regarding the design of a business component and cited examples from the legislative history which these commentators contend show that the determination of the appropriate design of a business component involved a process of experimentation.

Treasury and the IRS continue to believe that the requirements for a process of experimentation under section 41 are more stringent than the requirements for research and development in the experimental or laboratory sense under § 1.174–2(a)(1). However, Treasury and the IRS have determined that a process of experimentation may exist if a taxpayer performs research to establish the appropriate design of a business component when the capability and method for developing or improving the business component are not uncertain. As is discussed in more detail below, not all research to arrive at the appropriate design of a business component will be credit eligible.

These proposed regulations provide that a process of experimentation is a process designed to evaluate one or more alternatives to achieve a result where the capability or the method of achieving that result, or the appropriate design of that result, is uncertain as of the beginning of the taxpayer's research activities. Whether a taxpayer has undertaken a process of experimentation is a facts and circumstances determination. The proposed regulations provide factors that are indicative of a process of experimentation. The factors listed are not exclusive, and no one factor is dispositive.

A taxpayer's activities do not constitute elements of a process of experimentation where the capability and method of achieving the desired new or improved business component, and the appropriate design of the desired new or improved business component, are readily discernible and applicable as of the beginning of the taxpayer's research activities so that true experimentation in the scientific or laboratory sense would not have to be undertaken to test, analyze, and choose among viable alternatives. Similarly, a process of experimentation does not include merely selecting among several alternatives that are readily discernible and applicable. The fact that a taxpayer conducts only rudimentary or non-technological testing in order to develop or improve a business component tends to indicate that the appropriate design of the business component was readily discernible and applicable at the outset within the meaning of these rules.

TD 8930 provided that the substantially all requirement of section 41(d)(1)(C) is satisfied only if 80 percent or more of the research activities, measured on a cost or other consistently applied reasonable basis (and without regard to § 1.41–2(d)(2)), constitute elements of a process of experimentation for a purpose described in section 41(d)(3). The substantially all requirement is applied separately to each business component. These proposed regulations retain the same rule. Treasury and the IRS, however, request comments on the application of the substantially all rule. Treasury and the IRS are specifically interested in comments on whether research expenses incurred for non-qualified purposes are includible in the credit computation provided that substantially all of the research expenses constitute elements of a process of experimentation.

III. Internal Use Software

Section 41(d)(4)(E) provides that, except to the extent provided by regulations, research with respect to "computer software which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer" (i.e., internal-use software) is excluded from the definition of qualified research. TD 8930 provided that the development of internal-use software constitutes qualified research only if the research satisfies both the general requirements for credit eligibility under section 41 (including that the research not be otherwise excluded) and an additional, three-part high threshold of innovation test. TD 8930 defined internal-use software as software that is to be used internally, such as software used in general and administrative functions of the taxpayer, or in providing noncomputer services. Noncomputer services are services offered by a taxpayer to customers who do business with the taxpayer primarily to obtain a service other than a computer service, even if such other service is enabled, supported, or facilitated by computer or software technology. TD 8930, however, contained an exception to this rule that provides that internal-use software does not include software that is designed to

provide customers with a new feature, not available from the taxpayer's competitors, with respect to a noncomputer service and that the taxpayer reasonably anticipates will give rise to increased customer demand for the noncomputer service.

The high threshold of innovation test in TD 8930 generally required that (i) the internal-use software be innovative; (ii) the development of the internal-use software involve significant economic risk; and (iii) the internal-use software not be commercially available. The high threshold of innovation test, however, does not apply with respect to the development of software (i) for use in conducting qualified research; (ii) for use in a production process; (iii) for use as part of a package of hardware and software developed concurrently; and (iv) for use in providing computer services to customers. Computer services are services offered by a taxpayer to customers who do business with the taxpayer primarily for the use of the taxpayer's computer or software technology.

In response to Notice 2001–19, several commentators objected to the internal-use software provisions of TD 8930. After reviewing the legislative history to the 1986 Act, the Tax and Trade Relief Extension Act of 1998, Public Law 105–277, 112 Stat. 2681, 2681–888 (the 1998 Act), and the Tax Relief Extension Act of 1999, Public Law 106–170, 113 Stat. 1860, 1919, together with the comment letters, Treasury and the IRS made several changes to the internal-use software rules. These proposed regulations clarify the definition of internal-use software contained in TD 8930 as well as the exceptions to this definition and the types of software that are not required to satisfy the high threshold of innovation test. These changes are discussed below.

Internal-Use Software Defined

Under these proposed regulations, software that is developed by (or for the benefit of) the taxpayer primarily to be commercially sold, leased, licensed, or otherwise marketed, for separately stated consideration to unrelated third parties is not treated as internal use software. All other software is presumed to be developed by (or for the benefit of) the taxpayer primarily for the taxpayer's internal use. This distinction reflects the view that software that is sold, leased, licensed, or otherwise marketed, for separately stated consideration to unrelated third parties is software that is intended to be used primarily by the customers of the taxpayer, whereas software that does not satisfy this requirement is software that is intended to be used primarily by the taxpayer for its internal use or in connection with a noncomputer service provided by the taxpayer.

These proposed regulations retain the provision in TD 8930 that excluded from the definition of *internal-use software* computer software and hardware developed as a single product. This rule, however, has been modified in response to a commentator's suggestion that some purchasers of combined software and hardware packages may develop their own computer software to operate the package or modify the imbedded computer software. Because the computer software is an integral part of the hardware, these commentators urged that the computer software/hardware rule should be extended to these development costs. Treasury and the IRS agree that, provided the computer software is developed to be used with hardware as a single product and the activities are otherwise credit-eligible and not excluded under another provision (e.g., section 41(d)(4)(B)), the computer software/hardware rule should extend to these development costs. Thus, under these proposed regulations, internal-use software does not include a new or improved package of computer software and hardware developed together by the taxpayer as a single product (or to the costs to modify an acquired computer software and hardware package), of which the software is an integral part, that is used directly by the taxpayer in providing services in its trade or business to customers.

High Threshold of Innovation Test

These proposed regulations retain the general rule contained in TD 8930 that internal-use software must satisfy the general requirements for credit eligibility (and not be excluded from the definition of qualified research under any other exclusion) and the three-part high threshold of innovation test. These proposed regulations clarify the first prong of the three-part test by providing that internal-use software is innovative if the software is intended to be unique or novel and is intended to differ in a significant and inventive way from prior software implementations or methods. This change is being proposed pursuant to the authority provided in section 41(d)(4)(E) and the legislative history thereunder in order to update the definition of innovative contained in TD 8930. The TD 8930 definition was derived from the legislative history to the 1986 Act and required that the software be intended to result in a reduction in cost, improvement in speed, or other improvement, that is substantial and economically significant. Treasury and the IRS became concerned that the elements of the TD 8930 definition, while perhaps reflecting innovations in computer software in the mid-1980s, did not adequately reflect the factors that indicate that software is innovative today. The proposed change, therefore, is an attempt both to update the definition of innovative, and to provide a more flexible definition with continuing application. Several examples were added to these proposed regulations to illustrate the application of this proposed rule. The second and third prongs of the high threshold of innovation test (i.e., significant economic risk and commercial availability) remain unchanged from TD 8930.

Software Not Required To Satisfy the High Threshold of Innovation Test

Like TD 8930, these proposed regulations provide that software is not required to satisfy the high threshold of innovation test if the software was developed by the taxpayer for use in an activity that constitutes qualified research (other than the development of the internal-use software itself), a production process that meets the requirements of section 41(d)(1), or in providing computer services to customers. These proposed regulations, however, eliminate the special rule contained in TD 8930 for software used to deliver noncomputer services to customers with features that are not yet offered by a taxpayer's competitors. Several commentators stated that this rule is too limited and subjective in its application to have significant value to taxpayers. Due to other revisions contained in these proposed regulations, Treasury and the IRS believe that the computer software targeted by this rule generally would be credit eligible without this rule.

Several commentators objected to the distinction between computer services and noncomputer services and urged that the definition of internal-use software exclude any software used to deliver a service to customers or any software that includes an interface with customers or the public. An exclusion for software that includes an interface with customers or the public would entail substantial administrative difficulties and may inappropriately permit certain categories of costs (e.g., certain web site development costs) to constitute qualified research expenses without having to satisfy the high threshold of innovation test.

With respect to software developed by a taxpayer for use in a production process satisfying the requirements of section 41(d)(1), comments from service providers urged Treasury and the IRS to give service providers the same benefits as manufacturing companies. Congress provided an explicit exclusion for software developed for use in a production process; however, it did not provide a similar exclusion for software used in the provision of noncomputer services. Therefore, Treasury and the IRS conclude that software used in the provision of noncomputer services generally should be subject to the internal-use software requirements.

Effective Date

Treasury and the IRS propose the revisions to the internal-use software rules to be effective for taxable years beginning after December 31, 1985. Treasury and the IRS believe that the proposed rule is consistent with the legislative history and the legislative mandate for retroactive application of the rule. Taxpayers, however, may continue to rely on TD 8930 until regulations are finalized.

IV. Shrinking-Back Rule

TD 8930 contained a special shrinking-back rule. These proposed regulations revise the shrinking-back rule to conform it to the rule in the legislative history to the 1986 Act. These proposed regulations also reiterate that the shrinking-back rule may not itself be applied as a reason to exclude research activities from credit eligibility.

V. Other Exclusions

Several commentators raised issues concerning activities excluded from the definition of qualified research. In particular, the commentators were concerned about the research after commercial production exclusion. Because the rules contained in § 1.41–4(c) of TD 8930 closely reflected the legislative history regarding post-research activities, these proposed regulations retain the rules contained in TD 8930. See H.R. Conf. Rep. No. 99–841, at II–74–75. However, new examples are included to illustrate the application of the exclusions. Treasury and the IRS request comments concerning the application of the exclusions and the extent to which additional guidance concerning the exclusions may be helpful.

VI. Gross Receipts

When Congress revised the computation of the research credit to incorporate a taxpayer's gross receipts, neither the statute nor the legislative history defined the term *gross receipts*, other than to provide that gross receipts for any taxable year are reduced by returns and allowances made during the tax year, and, in the case of a foreign corporation, that only gross receipts effectively connected with the conduct of a trade or business within the United States are taken into account. See section 41(c)(6).

TD 8930 adopted a broad definition of the term *gross receipts* for purposes of computing the research credit. TD 8930 generally defined gross receipts as the total amount derived by a taxpayer from all activities and sources. In addition, because certain extraordinary gross receipts might not be taken into account when a business determines its research budget, TD 8930 provided that certain items (e.g., receipts from the sale or exchange of capital assets, or repayments of loans or similar instruments) would be excluded from the computation of gross receipts. Further, TD 8930 excluded from the definition of gross receipts any income derived by a taxpayer in a taxable year that precedes the first taxable year in which the taxpayer derives more than $25,000 in gross receipts other than investment income.

In response to Notice 2001–19, some commentators suggested that the definition of gross receipts created an administrative burden to the extent that taxpayers would be obligated to apply the definition of the term for the four years preceding the determination years as well as to the 1984 through 1988 base years.

These proposed regulations retain the definition of gross receipts contained in TD 8930. Treasury and the IRS continue to believe that the definition of gross receipts should be construed broadly and that the definition of gross receipts in TD 8930 is appropriate for purposes of computing the research credit. Further, Treasury and the IRS believe that the administrative burden referred to by commentators is due to the incremental nature of the credit and the statutorily determined base years, and not to the definition of gross receipts.

VII. Recordkeeping for the Research Credit

Under TD 8930, taxpayers were required to prepare and retain written documentation before or during the early stages of the research project that describes the principal questions to be answered and the information the taxpayer seeks to obtain that exceeds, expands, or refines the common knowledge of skilled professionals in the relevant field of science or engineering. These proposed regulations eliminate this recordkeeping requirement.

Treasury and the IRS recognize that the research credit presents a particular burden for taxpayers because tracking eligible expenditures may necessitate taxpayers preparing and keeping records unlikely to be prepared or kept for other business purposes. The fact that the records are not prepared or kept for other business purposes has made administration of the research credit burdensome for the IRS. Moreover, section 41 often requires an allocation between qualifying and non-qualifying costs that is difficult for taxpayers to make and for the IRS to administer.

Nevertheless, when the research credit was extended in 1999, Congress made clear that the credit should not impose unreasonable recordkeeping requirements:

> The conferees also are concerned about unnecessary and costly taxpayer record keeping burdens and reaffirm that eligibility for the credit is not intended to be contingent on meeting unreasonable recordkeeping requirements.

H.R. Conf. Rep. No. 106–478, at 132 (1999). Treasury and the IRS have re-evaluated whether a research credit-specific documentation requirement is warranted and have concluded that the high degree of variability in the objectives and conduct of research activities in the United States compels a conclusion that taxpayers must be provided reasonable flexibility in the manner in which they substantiate their research credits. Accordingly, Treasury and the IRS have concluded that the failure to keep records in a particular manner (so long as such records are in sufficiently usable form and detail to substantiate that the expenditures claimed are eligible for the credit) cannot serve as a basis for denying the credit. Treasury and the IRS have decided that the rules generally applicable under section 6001 provide sufficient detail about required documentary substantiation for purposes of the research credit. Consequently, no separate research credit-specific documentation requirement is included in these proposed regulations.

Section 1.6001–1 requires the keeping of records "sufficient to establish the amount of * * * credits, * * * required to be shown * * *." The consequence of failing to keep sufficient records substantiating a claimed credit may be denial of the credit. To address any ongoing recordkeeping concerns regarding the research credit, Treasury and the IRS propose to use pre-filing

processes, including industry issue resolution, pre-filing agreements, determination letters, and record retention agreements, to provide certainty to taxpayers about the records that must be kept and to ensure the availability to the IRS of the records necessary to examine taxpayers' returns expeditiously. Treasury and the IRS solicit comments from taxpayers on establishing recordkeeping rules that will facilitate compliance and administration, including whether pre-filing agreements should extend to the qualification of particular cost centers or to the procedures established by the taxpayer for determining the expenditures qualifying for the credit. Treasury and the IRS also solicit comments from taxpayers on the extent to which guidelines may be developed on an industry-by-industry basis.

Proposed Effective Dates

Except as specifically provided in § 1.41–4(c)(6)(ix), the proposed amendments to § 1.41–4 are proposed to apply to taxable years ending on or after December 26, 2001. Notwithstanding this prospective effective date, Treasury and the IRS believe that these rules prescribe the proper treatment of the expenditures they address, and the IRS generally will not challenge return positions consistent with the proposed regulations. Therefore, taxpayers may rely on these proposed regulations until the date final regulations under § 1.41–4 are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. All comments will be available for public inspection and copying.

A public hearing has been scheduled for March 27, 2002, at 10 a.m. in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit (in the manner described in the **ADDRESSES** portion of this preamble) comments and an outline of the topics to be discussed and the time to be devoted to each topic by March 6, 2002.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.41–0 is amended as follows:

1. Revising the section heading for 1.41–3.
2. Revising the entries for 1.41–4.
3. Revising the section heading for 1.41–8.

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§ 1.41–3 Base amount for taxable years ending on or after December 26, 2001.

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§ 1.41–4 Qualified research for expenditures paid or incurred in taxable years ending on or after December 26, 2001.

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(d) Recordkeeping for the research credit.
(e) Effective dates.

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§ 1.41–8 Special rules for taxable years ending on or after December 26, 2001.

Par. 3. Section 1.41–3 is amended by:

1. Revising the section heading.
2. Revising paragraph (e).

The revisions read as follows:

§ 1.41–3 Base amount for taxable years ending on or after December 26, 2001.

* * * * *

(e) *Effective date.* The rules of this section are applicable for taxable years ending on or after the date December 21, 2001.

Par. 4. Section 1.41–4 is revised to read as follows:

§ 1.41–4 Qualified research for expenditures paid or incurred in taxable years ending on or after December 26, 2001.

(a) *Qualified research*—(1) *General rule.* Research activities related to the development or improvement of a business component constitute qualified research only if the research activities meet all of the requirements of section 41(d)(1) and this section, and are not otherwise excluded under section 41(d)(3)(B) or (d)(4), or this section.

(2) *Requirements of section 41(d)(1).* Research constitutes qualified research only if it is research—

(i) With respect to which expenditures may be treated as expenses under section 174, see § 1.174–2;

(ii) That is undertaken for the purpose of discovering information that is technological in nature, and the application of which is intended to be useful in the development of a new or improved business component of the taxpayer; and

(iii) Substantially all of the activities of which constitute elements of a process of experimentation that relates to a new or improved function, performance, reliability or quality.

(3) *Undertaken for the purpose of discovering information*—(i) *In general.* For purposes of section 41(d) and this section, research must be undertaken for the purpose of discovering information that is technological in nature. Research is undertaken for the purpose of discovering information if it is intended to eliminate uncertainty concerning the development or improvement of a business component. Uncertainty exists if the information available to the taxpayer does not establish the capability or method for developing or improving the business component, or the appropriate design of the business component.

(ii) *Application of the discovering information requirement.* A determination that research is undertaken for the purpose of discovering information that is technological in nature does not require the taxpayer be seeking to obtain information that exceeds, expands or refines the common knowledge of skilled professionals in the particular field of science or engineering in which the taxpayer is performing the research. In addition, a determination that research is undertaken for the purpose of discovering information that is technological in nature does not require that the taxpayer succeed in developing a new or improved business component.

(iii) *Patent safe harbor.* For purposes of section 41(d) and paragraph (a)(3)(i) of this section, the issuance of a patent by the Patent and Trademark Office under the provisions of 35 U.S.C. 151 (other than a patent for design issued under the provisions of 35 U.S.C. 171) is conclusive evidence that a taxpayer has discovered information that is technological in nature that is intended to eliminate uncertainty concerning the development or improvement of a business component. However, the issuance of such a patent is not a precondition for credit availability.

(4) *Technological in nature.* For purposes of section 41(d) and this section, information is technological in nature if the process of experimentation used to discover such information fundamentally relies on principles of the physical or biological sciences, engineering, or computer science. A taxpayer may employ existing technologies and may rely on existing principles of the physical or biological sciences, engineering, or computer science to satisfy this requirement.

(5) *Process of experimentation*—(i) *In general.* For purposes of section 41(d) and this section, a process of experimentation is a process designed to evaluate one or more alternatives to achieve a result where the capability or the method of achieving that result, or the appropriate design of that result, is uncertain as of the beginning of the taxpayer's research activities. Thus, a taxpayer may undertake a process of experimentation if there is no uncertainty concerning the taxpayer's capability or method of achieving the desired result so long as the appropriate design of the desired result is uncertain as of the beginning of the taxpayer's research activities. However, a process of experimentation does not include the evaluation of alternatives to achieve the desired result if the capability and method of achieving the desired result, and the appropriate design of the desired result, are readily discernible and applicable as of the beginning of the taxpayer's research activities. A process of experimentation may include developing one or more hypotheses designed to achieve the desired result, designing and conducting an experiment to test and analyze those hypotheses, and refining or discarding the hypotheses as part of a design process to develop or improve the business component. For purposes of this paragraph (a)(5), factors that tend to indicate that the taxpayer has engaged in a process of experimentation are listed in paragraph (a)(5)(iv) of this section.

(ii) *Readily discernible capability, method and appropriate design.* A taxpayer's activities do not constitute elements of a process of experimentation where the capability and method of achieving the desired new or improved business component, and the appropriate design of the desired new or improved business component, are readily discernible and applicable as of the beginning of the taxpayer's research activities, so that true experimentation in the scientific or laboratory sense would not have to be undertaken to test, analyze, and choose among viable alternatives. A process of experimentation does not include any activities to select among several alternatives that are readily discernible and applicable.

(iii) *Qualified purpose.* For purposes of section 41(d) and this section, a process of experimentation is undertaken for a qualified purpose if it relates to a new or improved function, performance, reliability or quality of the business component. Research will not be treated as conducted for a qualified purpose if it relates to style, taste, cosmetic, or seasonal design factors.

(iv) *Factors tending to indicate that the taxpayer has engaged in a process of experimentation.* For purposes of section 41(d) and this section, in determining whether a taxpayer has undertaken a process of experimentation, all facts and circumstances with respect to a taxpayer's research activities are taken into account. No one factor is dispositive in making this determination. Further, it is not intended that only the factors described in this paragraph are to be taken into account in making the determination. Thus, no inference should be drawn from the taxpayer's failure to satisfy any or all of the factors. Among the factors that tend to indicate that the taxpayer has engaged in a process of experimentation are—

(A) The taxpayer tests and analyzes numerous alternative hypotheses to develop a new or improved business component;

(B) The taxpayer engages in extensive, comprehensive, intricate or complex scientific or laboratory testing; or

(C) The taxpayer evaluates numerous or complex specifications related to the

function, performance, reliability or quality of a new or improved business component.

(6) *Substantially all requirement*—(i) *General rule.* The substantially all requirement of section 41(d)(1)(C) and paragraph (a)(2)(iii) of this section is satisfied only if 80 percent or more of the research activities, measured on a cost or other consistently applied reasonable basis (and without regard to § 1.41–2(d)(2)), constitute elements of a process of experimentation for a purpose described in section 41(d)(3). The substantially all requirement is applied separately to each business component.

(ii) *Illustrations.* [Reserved]

(7) *Use of computers and information technology.* The employment of computers or information technology, or the reliance on principles of computer science or information technology to store, collect, manipulate, translate, disseminate, produce, distribute, or process data or information, and similar uses of computers and information technology does not itself establish that qualified research has been undertaken.

(8) *Illustrations.* The following examples illustrate the application of paragraph (a)(5) of this section:

Example 1. (i) *Facts.* X is engaged in the business of developing and manufacturing widgets. X wants to change the color of its blue widget to green. X obtains from various suppliers several different shades of green paint. X paints several sample widgets, and surveys X's customers to determine which shade of green X's customers prefer.

(ii) *Conclusion.* X's activities to change the color of its blue widget to green are not qualified research under section 41(d)(1) and paragraph (a)(5) of this section because substantially all of X's activities are not undertaken for a qualified purpose. All of X's research activities are related to style, taste, cosmetic, or seasonal design factors.

Example 2. (i) *Facts.* X is engaged in the business of manufacturing widgets and wants to change the color of its blue widget to green. X obtains samples of green paint from a supplier and determines that X must modify its painting process to accommodate the green paint because the green paint has different characteristics from other paints X has used. X obtains detailed data on the green paint from X's paint supplier. X also consults with the manufacturer of X's paint spraying machines and determines that X must acquire new nozzles that are designed to operate with paints similar to the green paint X wants to use. X installs the new nozzles on its paint spraying machines and tests the nozzles to ensure that they work as specified by the manufacturer of the paint spraying machines.

(ii) *Conclusion.* X's activities to modify its painting process is a separate business component under section 41(d)(2)(A). X's activities to modify its painting process by installing new nozzles on its paint spraying machines to change the color of its blue widget to green are not qualified research under section 41(d)(1) and paragraph (a)(5) of this section. The capability, method and appropriate design of the changes to X's painting process are readily discernible and applicable to X as of the beginning of X's activities. X's activities to test the nozzles to determine if the nozzles work as specified by the manufacturer of the paint spraying machines are not the type of testing activities that tend to indicate that a process of experimentation was undertaken.

Example 3. (i) *Facts.* X is engaged in the business of manufacturing food products and currently manufactures a large-shred version of a product. Because X's competitors manufacture both a large-shred and fine-shred version of comparable food products, X seeks to modify its current production line to permit it to manufacture both a large-shred version and fine-shred version of one of its own food products. A shredding blade capable of producing a fine-shred version of the food product is not commercially available. Thus, X must develop a new shredding blade that can be fitted onto X's current production line. X must test and analyze numerous alternative hypotheses to determine whether a new shredding blade must be constructed of a different material from that of its existing shredding blade. In addition, X must engage in comprehensive and complex scientific or laboratory testing to ensure that its modified production process, with the newly-developed shredding blade, can accommodate the manufacture of both the large-shred and fine-shred versions of X's food products.

(ii) *Conclusion.* X's activities to modify its current production line meet the requirements of qualified research as set forth in paragraph (a)(2) of this section. Substantially all of X's activities constitute elements of a process of experimentation because X must evaluate more than one alternative to achieve a result where the method and appropriate design are uncertain as of the beginning of the taxpayer's research activities. X must test and analyze numerous alternative hypotheses and engage in comprehensive and complex scientific or laboratory testing to ensure that its modified production process, with a newly-developed shredding blade, can accommodate the manufacture of both the large-shred and fine-shred versions of X's food products.

Example 4. (i) *Facts.* X operates wireless networks in several U.S. cities. X discovers in City a service problem and collects data on the nature of the problem. X analyzes the data and knows, based on its previous experience with wireless networks in other cities, that the installation of a new type of gateway will eliminate the problem. X installs the new gateway in its City network.

(ii) *Conclusion.* X's activities to determine a solution to its service problem are not qualified research under section 41(d)(1) and paragraph (a)(5) of this section. Substantially all of X's research activities do not constitute elements of a process of experimentation because the solution to the service problem is readily discernible and applicable by X as of the beginning of X's research activities.

Example 5. (i) Facts. X is engaged in the business of manufacturing and selling automobiles. X incorporated into one of its new vehicles a new exhaust system that it designed. After X offered the vehicle for sale, X received complaints of a rattling noise that could be heard in the passenger compartment. X's engineers determined that the cause of the noise was the exhaust system coming into contact with the undercarriage of the vehicle. Based on previous experience with similar noise problems, X's engineers knew of two safe, effective, reliable solutions that would eliminate the noise. X's engineers selected one of the solutions based on cost studies that indicated it would be the less expensive alternative.

(ii) *Conclusion.* X's activities to eliminate the rattling noise are not qualified research under section 41(d)(1) and paragraph (a)(5) of this section. Substantially all of X's research activities do not constitute elements of a process of experimentation because the solution is readily discernible and applicable to X as of the beginning of X's activities.

Example 6. (i) *Facts.* X is in the business of designing, developing and manufacturing automobiles and decides to update one of its current model vehicles. In response to government-mandated fuel economy requirements, X undertakes to improve aerodynamics by lowering the hood of the current model vehicle. X determines that lowering the hood changes the air flow under the hood, which changes the rate at which air enters the engine through the air intake system, and which reduces the functionality of the cooling system. X designs, models, tests, refines, and re-tests proposed modifications to both the air intake system and cooling system until modifications are developed that meet X's requirements. X then integrates the modified air intake and cooling systems into a current model vehicle with a lower hood, modifying in the process the new air intake and cooling systems as well as the underhood wiring, brake lines and fuel line. X conducts extensive and complex scientific or laboratory testing to determine if the current model vehicle meets X's requirements. X conducts extensive and complex scientific or laboratory testing (including simulations and crash tests) to determine if the current model vehicle meets X's requirements.

(ii) *Conclusion.* X's activities to update its vehicle meet the requirements of qualified research as set forth in paragraph (a)(2) of this section. X must test and analyze numerous alternative hypotheses, engage in extensive testing and analysis, and evaluate complex specifications related to the functionality of several of the vehicle's underhood systems and to the vehicle's overall performance. These activities indicate that X undertook a process of experimentation to achieve the appropriate design of the updated vehicle.

(b) *Application of requirements for qualified research*—(1) *In general.* The requirements for qualified research in section 41(d)(1) and paragraph (a) of this section, must be applied separately to each business component, as defined in section 41(d)(2)(B). In cases involving development of both a product and a manufacturing or other commercial

production process for the product, research activities relating to development of the process are not qualified research unless the requirements of section 41(d) and this section are met for the research activities relating to the process without taking into account the research activities relating to development of the product. Similarly, research activities relating to development of the product are not qualified research unless the requirements of section 41(d) and this section are met for the research activities relating to the product without taking into account the research activities relating to development of the manufacturing or other commercial production process.

(2) *Shrinking-back rule.* The requirements of section 41(d) and paragraph (a) of this section are to be applied first at the level of the discrete business component, that is, the product, process, computer software, technique, formula, or invention to be held for sale, lease, or license, or used by the taxpayer in a trade or business of the taxpayer. If the requirements for credit eligibility are met at that first level, then some or all of the taxpayer's qualified research expenses are eligible for the credit. If all aspects of such requirements are not met at that level, the test applies at the most significant subset of elements of the product, process, computer software, technique, formula, or invention to be held for sale, lease, or license. This shrinking back of the product is to continue until either a subset of elements of the product that satisfies the requirements is reached, or the most basic element of the product is reached and such element fails to satisfy the test. This shrinking-back rule is applied only if a taxpayer does not satisfy the requirements of section 41(d)(1) and paragraph (a)(2) of this section with respect to the overall business component. The shrinking-back rule is not itself applied as a reason to exclude research activities from credit eligibility.

(3) *Illustration.* The following example illustrates the application of this paragraph (b):

Example. X, a motorcycle engine builder, develops a new carburetor for use in a motorcycle engine. X also modifies an existing engine design for use with the new carburetor. Under the shrinking-back rule, the requirements of section 41(d)(1) and paragraph (a) of this section are applied first to the engine. If the modifications to the engine when viewed as a whole, including the development of the new carburetor, do not satisfy the requirements of section 41(d)(1) and paragraph (a) of this section, those requirements are applied to the next most significant subset of elements of the business component. Assuming that the next most significant subset of elements of the engine is the carburetor, the research activities in developing the new carburetor may constitute qualified research within the meaning of section 41(d)(1) and paragraph (a) of this section.

(c) *Excluded activities*—(1) *In general.* Qualified research does not include any activity described in section 41(d)(4) and paragraph (c) of this section.

(2) *Research after commercial production—(i) In general.* Activities conducted after the beginning of commercial production of a business component are not qualified research. Activities are conducted after the beginning of commercial production of a business component if such activities are conducted after the component is developed to the point where it is ready for commercial sale or use, or meets the basic functional and economic requirements of the taxpayer for the component's sale or use.

(ii) *Certain additional activities related to the business component.* The following activities are deemed to occur after the beginning of commercial production of a business component—

(A) Preproduction planning for a finished business component;

(B) Tooling-up for production;

(C) Trial production runs;

(D) Trouble shooting involving detecting faults in production equipment or processes;

(E) Accumulating data relating to production processes; and

(F) Debugging flaws in a business component.

(iii) *Activities related to production process or technique.* In cases involving development of both a product and a manufacturing or other commercial production process for the product, the exclusion described in section 41(d)(4)(A) and paragraphs (c)(2)(i) and (ii) of this section applies separately for the activities relating to the development of the product and the activities relating to the development of the process. For example, even after a product meets the taxpayer's basic functional and economic requirements, activities relating to the development of the manufacturing process still may constitute qualified research, provided that the development of the process itself separately satisfies the requirements of section 41(d) and this section, and the activities are conducted before the process meets the taxpayer's basic functional and economic requirements or is ready for commercial use.

(iv) *Clinical testing.* Clinical testing of a pharmaceutical product prior to its commercial production in the United States is not treated as occurring after the beginning of commercial production even if the product is commercially available in other countries. Additional clinical testing of a pharmaceutical product after a product has been approved for a specific therapeutic use by the Food and Drug Administration and is ready for commercial production and sale is not treated as occurring after the beginning of commercial production if such clinical testing is undertaken to establish new functional uses, characteristics, indications, combinations, dosages, or delivery forms for the product. A functional use, characteristic, indication, combination, dosage, or delivery form shall be considered new only if such functional use, characteristic, indication, combination, dosage, or delivery form must be approved by the Food and Drug Administration.

(3) *Adaptation of existing business components.* Activities relating to adapting an existing business component to a particular customer's requirement or need are not qualified research. This exclusion does not apply merely because a business component is intended for a specific customer.

(4) *Duplication of existing business component.* Activities relating to reproducing an existing business component (in whole or in part) from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information about the business component are not qualified research. This exclusion does not apply merely because the taxpayer examines an existing business component in the course of developing its own business component.

(5) *Surveys, studies, research relating to management functions, etc.* Qualified research does not include activities relating to—

(i) Efficiency surveys;

(ii) Management functions or techniques, including such items as preparation of financial data and analysis, development of employee training programs and management organization plans, and management-based changes in production processes (such as rearranging work stations on an assembly line);

(iii) Market research, testing, or development (including advertising or promotions);

(iv) Routine data collections; or

(v) Routine or ordinary testing or inspections for quality control.

(6) *Internal use software for taxable years beginning on or after the December 31, 1985*—(i) *General rule.* Research with respect to computer

software that is developed by (or for the benefit of) the taxpayer primarily for the taxpayer's internal use is eligible for the research credit only if the software satisfies the requirements of paragraph (c)(6)(ii) of this section.

(ii) *Requirements.* The requirements of this paragraph (c)(6)(ii) are—

(A) The software satisfies the requirements of section 41(d)(1);

(B) The software is not otherwise excluded under section 41(d)(4) (other than section 41(d)(4)(E)); and

(C) One of the following conditions is met—

(*1*) The taxpayer develops the software for use in an activity that constitutes qualified research (other than the development of the internal-use software itself);

(*2*) The taxpayer develops the software for use in a production process that satisfies the requirements of section 41(d)(1);

(*3*) The taxpayer develops the software for use in providing computer services to customers; or

(*4*) The software satisfies the high threshold of innovation test of paragraph (c)(6)(vi) of this section.

(iii) *Computer software and hardware developed as a single product.* This paragraph (c)(6) does not apply to the development costs of a new or improved package of computer software and hardware developed together by the taxpayer as a single product (or to the costs to modify an acquired computer software and hardware package), of which the software is an integral part, that is used directly by the taxpayer in providing services in its trade or business to customers. In these cases, eligibility for the research credit is to be determined by examining the combined software-hardware product as a single product.

(iv) *Primarily for internal use.* Unless computer software is developed to be commercially sold, leased, licensed, or otherwise marketed, for separately stated consideration to unrelated third parties, computer software is presumed developed by (or for the benefit of) the taxpayer primarily for the taxpayer's internal use. For example, the computer software may serve general and administrative functions of the taxpayer, or may be used in providing a noncomputer service. General and administrative functions include, but are not limited to, functions such as payroll, bookkeeping, financial management, financial reporting, personnel management, sales and marketing, fixed asset accounting, inventory management and cost accounting. Computer software that is developed to be commercially sold, leased, licensed or otherwise marketed, for separately stated consideration to unrelated third parties is not developed primarily for the taxpayer's internal use. The requirements of this paragraph (c)(6) apply to computer software that is developed primarily for the taxpayer's internal use even though the taxpayer subsequently sells, leases, licenses, or otherwise markets the computer software for separately stated consideration to unrelated third parties.

(v) *Software used in the provision of services*—(A) Computer services. For purposes of this section, a computer service is a service offered by a taxpayer to customers who conduct business with the taxpayer primarily for the use of the taxpayer's computer or software technology. A taxpayer does not provide a computer service merely because customers interact with the taxpayer's software.

(B) *Noncomputer services.* For purposes of this section, a noncomputer service is a service offered by a taxpayer to customers who conduct business with the taxpayer primarily to obtain a service other than a computer service, even if such other service is enabled, supported, or facilitated by computer or software technology.

(vi) *High threshold of innovation test.* Computer software satisfies this paragraph (c)(6)(vi) only if the taxpayer can establish that—

(A) The software is innovative in that the software is intended to be unique or novel and is intended to differ in a significant and inventive way from prior software implementations or methods;

(B) The software development involves significant economic risk in that the taxpayer commits substantial resources to the development and there is substantial uncertainty, because of technical risk, that such resources would be recovered within a reasonable period; and

(C) The software is not commercially available for use by the taxpayer in that the software cannot be purchased, leased, or licensed and used for the intended purpose without modifications that would satisfy the requirements of paragraphs (c)(6)(v)(A) and (B) of this section.

(vii) *Application of high threshold of innovation test.* The costs of developing internal use software are eligible for the research credit only if the software satisfies the high threshold of innovation test of paragraph (c)(6)(vi) of this section. This test takes into account only the results attributable to the development of the new or improved software independent of the effect of any modifications to related hardware or other software.

(viii) *Illustrations.* The following examples illustrate provisions contained in this paragraph (c)(6) of this section. No inference should be drawn from these examples concerning the application of section 41(d)(1) and paragraph (a) of this section to these facts. The examples are as follows:

Example 1. (i) *Facts.* X, an insurance company, has increased its number of insurance policies in force. In recent years, regulatory and financial accounting rules for computing actuarial reserves on these insurance policies have changed several times. In order to compute actuarial reserves in a more timely and cost-effective manner, X undertakes to create an improved reserve valuation software that will generate data for regulatory and financial accounting purposes.

(ii) *Conclusion.* The improved reserve valuation software created by X is internal use software because the software is not developed to be commercially sold, leased, licensed, or otherwise marketed, for separately stated consideration to unrelated third parties. The improved reserve valuation software was developed by X to serve X's general and administrative functions. X's costs of developing the reserve valuation software are eligible for the research credit only if the software satisfies the high threshold of innovation test of paragraph (c)(6)(vi) of this section.

Example 2. (i) *Facts.* Assume the same facts as in *Example 1.* Also assume that in order to create an improved reserve valuation software, X purchases updated hardware with a new operating system to build the new software system. Several other insurance companies using the same updated hardware and new operating system have in place software systems that can handle the volume of transactions that X seeks to handle, provide reserve computations within a similar time frame, and accommodate the most current regulatory and financial accounting requirements.

(ii) *Conclusion.* X's reserve valuation software system is internal use software that does not satisfy the high threshold of innovation test of paragraph (c)(6)(vi) of this section. The software is not intended to be unique or novel in that it is intended to be merely comparable to software developed by other insurance companies. The software does not differ in a significant or inventive way from prior software implementations because X's reserve valuation software system was developed using the same technologies and methods that were employed by other insurance companies. Further, X's reserve valuation software is not excluded from the application of paragraph (c)(6) of this section by the rule of paragraph (c)(6)(iii) of this section.

Example 3. (i) *Facts.* In 1986, X, a large regional bank with hundreds of branch offices, maintained separate software systems for each of its customer's accounts, including checking, deposit, loan, lease, and trust. X determined that improved customer service could be achieved by redesigning its disparate systems into one customer-centric system. X also determined that commercially

available database management systems did not meet all of the critical requirements of the proposed system. Specifically, available relational database management systems were well suited for the proposed system's data modeling requirements but not the data integrity and transaction throughput (transactions-per-second) requirements. Rather than waiting several years for vendor offerings to mature and become viable for its purpose, X decided to embark upon the project utilizing older technology that satisfied the data integrity and transaction throughput requirements but that was severely challenged with respect to the data modeling capabilities. X commits substantial resources to this project and, because of technical risk, X cannot determine if it will recover its resources in a reasonable period. Early in the course of the project, industry analysts observed that the project appeared highly ambitious and risky. The limitations of the technology X was attempting to utilize required that X develop a new database architecture that could accommodate transaction volumes unheard-of in the industry. X was unable to successfully develop the system and X abandoned the project.

(ii) *Conclusion.* X intended to develop a computer software system primarily for X's internal use because X did not intend to commercially sell, lease, license, or otherwise market the software, for separately stated consideration to unrelated third parties, and X intended to use the software in providing noncomputer services to its customers. X's software development activities satisfy the high threshold of innovation test of paragraph (c)(6)(vi) of this section because the system was intended to be innovative in that it was intended to be novel and it was intended to differ in a significant and inventive way from prior software implementations. In addition, X's development activities involved significant economic risk in that X committed substantial resources to the development and there was substantial uncertainty, because of technical risk, that such resources would be recovered within a reasonable period. Finally, at the time X undertook the development of the system, software meeting X's requirements was not commercially available for use by X.

Example 4. (i) *Facts.* X wishes to improve upon its capabilities in the area of insurance fraud prevention, detection and control. X believes that it can exceed the capabilities of current commercial offerings in this area by developing and applying pattern matching algorithms that are not implemented in current vendor offerings. X has determined that many insurance fraud perpetrators can evade detection because its current system relies too heavily on exact matches and scrubbed data. Because a computer software system that will accomplish these objectives is not commercially available, X undertakes to develop and implement advanced pattern matching algorithms that would significantly improve upon the capabilities currently available from vendors. X commits substantial resources to the development of the software system and cannot determine, because of technical risk, if it will recover its investment within a reasonable period.

(ii) *Conclusion.* X's computer software system is developed primarily for X's internal use because X did not intend to sell, lease, license or otherwise market the software, for separately stated consideration to unrelated third parties. X's software development activities satisfy the high threshold of innovation test of paragraph (c)(6)(vi) of this section because the software system is innovative in that it was intended to be novel and it was intended to differ in a significant and inventive way from prior software implementations. In addition, X's development activities involved significant economic risk in that X committed substantial resources to the development and there was substantial uncertainty, because of technical risk, that such resources would be recovered within a reasonable period. Finally, at the time X undertook the development of the software, software satisfying X's requirements was not commercially available for use by X.

Example 5. (i) *Facts.* X is engaged in the business of designing, manufacturing, and selling widgets. X delivers its widgets in the same manner and time as its competitors. To improve customer service, X undertakes to develop computer software that will monitor the progress of the manufacture and delivery of X's widgets to enable X's customers to track their widget orders from origination to delivery, whether by air, land or ship. In addition, at the request of a customer, X will be able to intercept and return or reroute packages prior to delivery. At the time X undertakes its software development activities, X is uncertain whether it can develop the real-time communication software necessary to achieve its objective. None of X's competitors have a comparable tracking system. X commits substantial resources to the development of the system and, because of technical risk, X cannot determine if it will recover its investment within a reasonable period.

(ii) *Conclusion.* X's computer software is developed primarily for X's internal use because the software is not developed to be commercially sold, leased, licensed, or otherwise marketed, for separately stated consideration to unrelated third parties. X's computer software was developed to be used by X in providing noncomputer services to its customers. X's software satisfies the high threshold of innovation test of paragraph (c)(6)(vi) of this section because, at the time the research is undertaken, X's software is designed to provide a new tracking capability that is novel in that none of X's competitors have such a capability. Further, the new capability differs in a significant and inventive way from prior software implementations. In addition, X's development activities involved significant economic risk in that X committed suhstantial resources to the development and there was substantial uncertainty, because of technical risk, that such resources would be recovered within a reasonable period. Finally, at the time X undertook the development of the software, software satisfying X's requirements was not commercially available for use by X.

Example 6. (i) *Facts.* X, a multinational chemical manufacturer with different business and financial systems in each of its divisions, undertakes a software development project aimed at integrating the majority of the functional areas of its major software systems into a single enterprise resource management system supporting centralized financial systems, inventory, and management reporting. This project involves the detailed analysis of X's (as well as each of X's divisions) legacy systems to understand the actual current business processes and data requirements. X also has to develop programs to fill in the gaps between the software features and X's system requirements. X hires Y, a systems consulting firm to assist with this development effort. Y has experience in developing similar systems. X, working jointly with Y, evaluates its needs, establishes goals for the new system, re-engineers the business processes that will be made concurrently with the implementation of the new system, and chooses and purchases a software system upon which to base its enterprise-wide system.

(ii) *Conclusion.* X's enterprise-wide computer software is developed primarily for internal use because the software is not developed to be commercially sold, leased, licensed, or otherwise marketed, for separately stated consideration to unrelated third parties. X's computer software was developed to be used by X to serve X's general and administrative functions. However, the development of X's enterprise management system does not satisfy the high threshold of innovation test of paragraph (c)(6)(vi) of this section because the system that X is seeking to develop is not intended to be unique or novel. Further, the software does not differ in a significant or inventive way from software implemented by other manufacturers.

Example 7. (i) *Facts.* X, a financial services company specializing in commercial mortgages, decides to support its ongoing expansion by upgrading its information technology infrastructure. In order to accommodate its expanding efforts to acquire and maintain corporate borrowers and draw securitized loan investors, X builds a scalable and modular enterprise network to run its latest business applications, including web-based portfolio access for investors and staff, document imaging for customer service personnel, desktop access to information services for in-house securities traders and multimedia on-line training and corporate information delivery for all company personnel. As a result, X is able to access market information faster and function more efficiently and effectively than before. The new network is based on a faster local area network technology which is better able to meet the higher bandwidth requirements of X's current multimedia applications.

(ii) *Conclusion.* X's software is software developed primarily for X's internal use because the software is not developed to be commercially sold, leased, licensed, or otherwise marketed, for separately stated consideration to unrelated third parties. X's software development activities do not meet the high threshold of innovation test of paragraph (c)(6)(vi) of this section because the system is not intended to be unique or

novel. Further, the software does not differ in a significant or inventive way from other existing software implementations.

Example 8. (i) *Facts.* X, a corporation, undertook a software project to rewrite a legacy mainframe application using an object-oriented programming language, and to move the new application off the mainframe to a client/server environment. Both the object-oriented language and client/server technologies were new to X. This project was undertaken to develop a more maintainable application, and to be able to implement new features more quickly. X had to perform a detailed analysis of the old legacy application in order to determine the requirements of the rewritten application. To accomplish this task, X had to train the legacy mainframe programmers in the new object-oriented and client/server technologies that they would have to utilize. Several of X's competitors had successfully implemented similar systems using object-oriented programming language and client/server technologies.

(ii) *Conclusion.* X's software is developed primarily for internal use because the software is not developed to be commercially sold, leased, licensed, or otherwise marketed, for separately stated consideration to unrelated third parties. X's activities to rewrite a legacy mainframe application using an object-oriented programming language, and to move the application from X's mainframe to a client/server environment do not satisfy the high threshold of innovation test of paragraph (c)(6)(vi) of this section. The software developed is not intended to be either unique or novel and is not intended to differ in a significant and inventive way from prior software implementations or methods.

Example 9. (i) *Facts.* X, a retail and distribution company, wants to upgrade its warehouse management software. Therefore, X performs an analysis of the warehouse management products and vendors in the marketplace. X selects vendor V's software and, in turn, develops the software interfaces between X's legacy systems and V's warehouse management software in order to integrate the new warehouse management system with X's financial and inventory systems. The development of these interfaces requires a detailed understanding of all the input and output fields and their data formats, and how they map from the old system to the new system and vice-versa. Once X develops the interfaces, X has to perform extensive testing and validation work to ensure that the interfaces work correctly and accurately.

(ii) *Conclusion.* X's software is developed primarily for internal use because the software is not developed to be commercially sold, leased, licensed, or otherwise marketed, for separately stated consideration to unrelated third parties. X's software development activities do not satisfy the high threshold of innovation test of paragraph (c)(6)(vi) of this section because the software development does not involve significant economic risk in that there is no substantial uncertainty, because of technical risk, that such resources will be recovered within a reasonable period.

Example 10. (i) *Facts.* X, a credit card company, knows that its customers are not comfortable with purchasing products over the Internet because they feel the Web is not secure. X decides to build a payment system that provides customers with a single use, automatically generated, short-term time-based, transaction number. This single-use transaction number has a short expiration period that is just long enough to allow a merchant to process and fill the customer's order. Thus, when a customer wishes to make a purchase over the Internet, the customer requests X to generate automatically a single-use transaction number that merchant systems will accept as a legitimate card number. All purchases using single-use transaction numbers are automatically linked back to the customer's credit card account. X commits substantial resources to the development of the system and X cannot determine, because of technical risk, if it will recover its investment within a reasonable period. At the time of this project, nothing exists in the market that has these capabilities.

(ii) *Conclusion* X's software is developed primarily for internal use because the software is not developed to be commercially sold, leased, licensed, or otherwise marketed, for separately stated consideration to unrelated third parties. X's computer software is developed primarily for X's internal use because it was intended to be used by X in providing noncomputer services to its customers. X's software satisfies the high threshold of innovation test of paragraph (c)(6)(vi) of this section because the system is a novel way to solve the security issue of making purchases over the Internet. Further, because of the secure payment capability, the software differs in a significant and inventive way from prior software implementations. In addition, X's development activities involved significant economic risk in that X committed substantial resources to the development and there was substantial uncertainty, because of technical risk, that such resources would be recovered within a reasonable period. Finally, at the time X undertook the development of the software, software satisfying X's requirements was not commercially available for use by X.

Example 11. (i) *Facts.* X, a corporation, wants to expand its internal computing power, and is aware that its PCs and workstations are idle at night, on the weekends, and for a significant part of any business day. Because the corporate computations that X needs to make could be done on workstations as well as PCs, X develops a screen-saver like application that runs on employee computers. When employees' computers have been idle for an amount of time set by each employee, the "screen-saver" starts to execute. However, instead of displaying moving lines, like the typical screen-saver, X's application goes back to a central server to get a new job to execute. This job will execute on the idle employee's computer until it has either finished, or the employee resumes working on his computer. X wants to ensure that it can manage all of the computation jobs distributed across its thousands of PCs and workstations. In addition, X wants to ensure that the additional load on its network caused by downloading the jobs and uploading the results, as well as in monitoring and managing the jobs, does not adversely impact the corporate computing infrastructure. At the time X undertook this software development project, X was uncertain, because of technical risk, it could develop a server application that could schedule and distribute the jobs across thousands of PCs and workstations, as well as handle all the error conditions that occur on a user's machine. Also, at the time X undertook this project, there was no commercial application available with such a capability.

(ii) *Conclusion.* X's computer software is developed primarily for internal use because the software is not developed to be commercially sold, leased, licensed, or otherwise marketed, for separately stated consideration to unrelated third parties. X's computer software was developed to be used by X to serve X's general and administrative functions. X's software satisfies the high threshold of innovation test of paragraph (c)(6)(vi) of this section because making use of idle corporate computing resources through what is ostensibly a screen-saver, was a novel approach to solving X's need for more computer intensive processing time. In addition, X's software development involves significant economic risk in that there was substantial uncertainty, because of technical risk, that the server application that schedules and distributes the jobs across thousands of PCs and workstations, as well as handles all the error conditions that can occur on a user's machine, amounts to developing a new operating system with new capabilities. Finally, at the time X undertook the development of the software, software satisfying X's requirements was not commercially available for use by X.

Example 12. (i) *Facts.* (A) X, a corporation, wants to protect its internal documents without building a large public key infrastructure. In addition, X needs to implement a new highly secure encryption algorithm that has a "back-door" such that X can decrypt and read any document, even when the employee is on vacation or leaves the company. X wants to develop a new encryption algorithm that is both secure, easy to use, and difficult to break. Current commercial encryption/decryption products are too slow for high-level secure encryption processing. Furthermore, no commercial product exists that provides the capability of having a secure back-door key to decrypt files when the owner is unavailable.

(B) The development of the encryption/decryption software requires specialized knowledge of cryptography and computational methods. Due to the secret nature of X's work, the encryption algorithm has to be unbreakable, yet recoverable should the employee forget his key. X commits substantial resources to the development of the system and, because of technical risk, cannot estimate whether it will recover its investment within a reasonable period.

(ii) *Conclusion.* X's back-door file encryption software is developed primarily for internal use because the software is not developed to be commercially sold, leased, licensed, or otherwise marketed, for

separately stated consideration to unrelated third parties. X's back-door file encryption software was developed to be used by X to serve X's general and administrative functions. X's encryption software satisfies the high threshold of innovation test of paragraph (c)(6)(vi) of this section because, at the time the research is undertaken, X's software is designed to provide encryption and back-door decryption capabilities that are unique in that no other product has these capabilities, which indicates the software encryption system differs in a significant way from prior software implementations. Further, the encryption and back-door decryption capabilities indicate that the software differs in a significant and inventive way from prior software implementations. In addition, X's development activities involved significant economic risk in that X committed substantial resources to the development and there was substantial uncertainty, because of technical risk, that such resources would be recovered within a reasonable period. Finally, at the time X undertook the development of the software, software satisfying X's requirements was not commercially available for use by X.

Example 13. (i) *Facts.* X, a large regional telephone company, is experiencing rapidly increasing customer demand. X would like to determine whether evolutionary algorithms such as genetic algorithms may improve its ability to design cost-effective networks and extend existing networks. X would also like to determine whether such adaptive algorithms may be used to optimize the routing of call traffic across existing networks in order to use efficiently the resources available without causing congestion. X first explores the use of evolutionary algorithms for the call routing task, because X determines that this type of complex, unpredictable problem is most appropriate for an adaptive algorithm solution. X develops and tests genetic algorithms until it determines that it has developed a software system it can test on a pilot basis on its existing networks. X commits substantial resources to the project, and cannot predict, because of technical risk, whether it will recover its resources within a reasonable period. Finally, at the time X undertook the development of the software, software satisfying X's requirements was not commercially available for use by X.

(ii) *Conclusion.* X's software is developed primarily for internal use because the software is not developed to be commercially sold, leased, licensed, or otherwise marketed, for separately stated consideration to unrelated third parties. X's computer software is intended to be used by X in providing noncomputer services to its customers. X's software satisfies the high threshold of innovation test of paragraph (c)(6)(vi) of this section because the software is intended to be novel and is intended to differ in a significant and inventive way from other existing software implementations. In addition, X's development activities involved significant economic risk in that X committed substantial resources to the development and there was substantial uncertainty, because of technical risk, that such resources would be recovered within a reasonable period. Finally, at the time X undertook the development of the software, software satisfying X's requirements was not commercially available.

(ix) *Effective date.* This paragraph (c)(6) is applicable for taxable years beginning after December 31, 1985.

(7) *Activities outside the United States, Puerto Rico, and other possessions*—(i) *In general.* Research conducted outside the United States, as defined in section 7701(a)(9), the Commonwealth of Puerto Rico and other possessions of the United States does not constitute qualified research.

(ii) *Apportionment of in-house research expenses.* In-house research expenses paid or incurred for qualified services performed both in the United States, the Commonwealth of Puerto Rico and other possessions of the United States and outside the United States, the Commonwealth of Puerto Rico and other possessions of the United States must be apportioned between the services performed in the United States, the Commonwealth of Puerto Rico and other possessions of the United States and the services performed outside the United States, the Commonwealth of Puerto Rico and other possessions of the United States. Only those in-house research expenses apportioned to the services performed within the United States, the Commonwealth of Puerto Rico and other possessions of the United States are eligible to be treated as qualified research expenses, unless the in-house research expenses are wages and the 80 percent rule of § 1.41–2(d)(2) applies.

(iii) *Apportionment of contract research expenses.* If contract research is performed partly in the United States, the Commonwealth of Puerto Rico and other possessions of the United States and partly outside the United States, the Commonwealth of Puerto Rico and other possessions of the United States, only 65 percent (or 75 percent in the case of amounts paid to qualified research consortia) of the portion of the contract amount that is attributable to the research activity performed in the United States, the Commonwealth of Puerto Rico and other possessions of the United States may qualify as a contract research expense (even if 80 percent or more of the contract amount is for research performed in the United States, the Commonwealth of Puerto Rico and other possessions of the United States).

(8) *Research in the social sciences, etc.* Qualified research does not include research in the social sciences (including economics, business management, and behavioral sciences), arts, or humanities.

(9) *Research funded by any grant, contract, or otherwise.* Qualified research does not include any research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity). To determine the extent to which research is so funded, § 1.41–4A(d) applies.

(10) *Illustrations.* The following examples illustrate provisions contained in paragraphs (c)(1) through (9) (excepting (c)(6)) of this section. No inference should be drawn from these examples concerning the application of section 41(d)(1) and paragraph (a) of this section to these facts. The examples are as follows:

Example 1. (i) *Facts.* X, a tire manufacturer, develops a new material to use in its tires. X conducts research to determine the changes that will be necessary for X to modify its existing manufacturing processes to manufacture the new tire. X determines that the new material retains heat for a longer period of time than the materials X currently uses and, as a result, adheres to the manufacturing equipment during tread cooling. X evaluates numerous options for processing the treads at cooler temperatures. X designs, develops, and conducts sophisticated tests on the numerous options for a new type of belt to be used in tread cooling. X then manufactures a set of belts for its production equipment, installs the belts, and tests the belts to make sure they were manufactured correctly.

(ii) *Conclusion.* X's research with respect to the design of the new belts to be used in its manufacturing of the new tire may be qualified research under section 41(d)(1) and paragraph (a) of this section. However, X's expenses to implement the design, including the costs to manufacture, install, and test the belts were incurred after the belts met the taxpayer's functional and economic requirements and are excluded as research after commercial production under section 41(d)(4)(A) and paragraph (c)(2) of this section. In addition, amounts expended on component materials of the production belts and the costs of labor or other elements involved in the manufacture and installation of the production belts are not qualified research expenses. These expenses are not for expenditures that may be treated as expenses under section 174 and thus are not qualified research under section 41(d)(1)(A) and paragraph (a)(2)(i) of this section. See section 174(c) and § 1.174–2(b). Further, testing or inspection to determine whether the production belts were manufactured correctly is quality control testing under § 1.174–2(a)(4) and thus is not qualified research under section 41(d)(1)(A) and paragraph (a)(2)(i) of this section.

Example 2. (i) *Facts.* For several years, X has manufactured and sold a particular kind of widget. X initiates a new research project to develop a new or improved widget.

(ii) *Conclusion.* X's activities to develop a new or improved widget are not excluded from the definition of qualified research under section 41(d)(4)(A) and paragraph (c)(2) of this section. X's activities relating to

the development of a new or improved widget constitute a new research project to develop a new business component. X's research activities relating to the development of the new or improved widget, a new business component, are not considered to be activities conducted after the beginning of commercial production under section 41(d)(4)(A) and paragraph (c)(2) of this section.

Example 3. (i) *Facts.* X, a computer software development firm, owns all substantial rights in a general ledger accounting software core program that X markets and licenses to customers. X incurs expenditures in adapting the core software program to the requirements of C, one of X's customers.

(ii) *Conclusion.* Because X's activities represent activities to adapt an existing software program to a particular customer's requirement or need, X's activities are excluded from the definition of qualified research under section 41(d)(4)(B) and paragraph (c)(3) of this section.

Example 4. (i) *Facts.* The facts are the same as in *example 3*, except that C pays X to adapt the core software program to C's requirements.

(ii) *Conclusion.* Because X's activities are excluded from the definition of qualified research under section 41(d)(4)(B) and paragraph (c)(3) of this section, C's payments to X are not for qualified research and are not considered to be contract research expenses under section 41(b)(3)(A).

Example 5. (i) *Facts.* The facts are the same as in *example 3*, except that C's own employees adapt the core software program to C's requirements.

(ii) *Conclusion.* Because C's employees' activities to adapt the core software program to C's requirements are excluded from the definition of qualified research under section 41(d)(4)(B) and paragraph (c)(3) of this section, the wages C paid to its employees do not constitute in-house research expenses under section 41(b)(2)(A).

Example 6. (i) *Facts.* X manufacturer and sells rail cars. Because rail cars have numerous specifications related to performance, reliability and quality, rail car designs are subject to extensive, complex testing in the scientific or laboratory sense. B orders passenger rail cars from X. B's rail car requirements differ from those of X's other customers in that B wants fewer seats in its passenger cars and a higher quality seating material and carpet. X manufactures rail cars meeting B's requirements. X does not conduct complex testing in the scientific or laboratory sense on the rail cars manufactured for B.

(ii) *Conclusion.* X's activities to manufacture rail cars for B are excluded from the definition of qualified research. The rail cars designed for B were not subject to the type of complex testing that is indicative of a process of experimentation. Further, the rail car sold to B was not a new business component, but merely an adaptation of an existing business component. Thus, X's activities to manufacture rail cars for B are excluded from the definition of qualified research under section 41(d)(4)(B) and paragraph (c)(3) of this section because X's activities represent activities to adapt an existing business component to a particular customer's requirement or need.

Example 7. (1) *Facts.* X, a manufacturer, undertakes to create a manufacturing process for a new valve design. X determines that it requires a specialized type of robotic equipment to use in the manufacturing process for its new valves. X is unable to locate robotic equipment that meets X's precise specifications, and, therefore, purchases the existing robotic equipment for the purpose of modifying it to meet its needs. X's engineers conduct experiments using modeling and simulation in modifying the robotic equipment and conduct extensive scientific and laboratory testing of design alternatives. As a result of this process, X's engineers develop a design for the robotic equipment that meets X's specifications. X constructs and installs the modified robotic equipment on its manufacturing process.

(ii) *Conclusion.* X's research activities to determine how to modify X's robotic equipment for its manufacturing process are not excluded from the definition of qualified research under section 41(d)(4)(B) and paragraph (c)(3) of this section.

Example 8. (1) *Facts.* An existing gasoline additive is manufactured by Y using three ingredients, A, B, and C. X seeks to develop and manufacture its own gasoline additive that appears and functions in a manner similar to Y's additive. To develop its own additive, X first inspects the composition of Y's additive, and uses knowledge gained from the inspection to reproduce A and B in the laboratory. Any differences between ingredients A and B that are used in Y's additive and those reproduced by X are insignificant and are not material to the viability, effectiveness, or cost of A and B. X desires to use with A and B an ingredient that has a materially lower cost than ingredient C. Accordingly, X engages in a process of experimentation to develop, analyze and test potential alternative formulations of the additive.

(ii) *Conclusion.* X's activities in analyzing and reproducing ingredients A and B involve duplication of existing business components and are excluded from the definition of qualified research under section 41(d)(4)(C) and paragraph (c)(4) of this section. X's experimentation activities to develop potential alternative formulations of the additive do not involve duplication of an existing business component and are not excluded from the definition of qualified research under section 41(d)(4)(C) and paragraph (c)(4) of this section.

Example 9. (1) *Facts.* X, a manufacturing corporation, undertakes to restructure its manufacturing organization. X organizes a team to design an organizational structure that will improve X's business operations. The team includes X's employees as well as outside management consultants. The team studies current operations, interviews X's employees, and studies the structure of other manufacturing facilities to determine appropriate modifications to X's current business operations. The team develops a recommendation of proposed modifications which it presents to X's management. X's management approves the team's recommendation and begins to implement the proposed modifications.

(ii) *Conclusion.* X's activities in developing and implementing the new management structure are excluded from the definition of qualified research under section 41(d)(4)(D) and paragraph (c)(5) of this section. Qualified research does not include activities relating to management functions or techniques including management organization plans and management-based changes in production processes.

Example 10. (1) *Facts.* X, an insurance company, develops a new life insurance product. In the course of developing the product, X engages in research with respect to the effect of pricing and tax consequences on demand for the product, the expected volatility of interest rates, and the expected mortality rates (based on published data and prior insurance claims).

(ii) *Conclusion.* X's activities related to the new product represent research in the social sciences (including economics and business management) and are thus excluded from the definition of qualified research under section 41(d)(4)(G) and paragraph (c)(8) of this section.

(d) *Recordkeeping for the research credit.* A taxpayer claiming a credit under section 41 must retain records in sufficiently usable form and detail to substantiate that the expenditures claimed are eligible for the credit. For the rules governing record retention, see § 1.6001–1. To facilitate compliance and administration, the IRS and taxpayers may agree to guidelines for the keeping of specific records for purposes of substantiating research credits.

(e) *Effective dates.* In general, the rules of this section are applicable for taxable years ending on or after December 26, 2002.

Par. 5. Section 1.41–8 is amended by:

1. Revising the section heading.

2. Revising paragraph (b)(4).

The revisions read as follows:

§ 1.41–8 Special rules for taxable years ending on or after December 26, 2001.

* * * * *

(b) * * *

(4) *Effective date.* Paragraphs (b)(2) and (3) of this section are applicable for taxable years ending on or after December 26, 2002.

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 01–31007 Filed 12–21–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–119436–01]

RIN 1545–AY87

New Markets Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the new markets tax credit. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by February 25, 2002. Outlines of topics to be discussed at the public hearing scheduled for March 14, 2002, must be received by February 21, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–119436–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–119436–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html*. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Paul Handleman, (202) 622–3040; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garret, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collection of information should be received by February 25, 2002.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility; The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The requirement for the collection of information in this notice of proposed rulemaking is in § 1.45D–1(g)(2). The information is required so that a taxpayer may claim a new markets tax credit on each credit allowance date during the 7-year credit period and report compliance with the requirements of section 45D and the regulations thereunder to the Secretary. The collection of information is mandatory. The likely respondents are businesses or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

Estimated total annual reporting burden: 378 hours.

The estimated annual burden per respondent: 2.5 hours.

Estimated number of respondents : 151.

Estimated annual frequency of responses: once.

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

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

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 45D. The temporary regulations provide guidance for taxpayers claiming the new markets tax credit under section 45D. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that any burden on taxpayers is minimal. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for March 14, 2002, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must use the main building entrance on Constitution Avenue, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15

minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by February 21, 2002.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Paul F. Handleman, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.45D–1 also issued under 26 U.S.C. 45D(i); * * *

Par. 2. Section 1.45D–1 is added to read as follows:

§ 1.45D–1 New markets tax credit.

[The text of proposed § 1.45D–1 is the same as the text of § 1.45D–1T published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01–31529 Filed 12–21–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

[SPATS No. LA–021–FOR]

Louisiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of revisions to a previously proposed amendment to the Louisiana regulatory program (Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The revisions concern valid existing rights. Louisiana intends to revise its program to be consistent with the corresponding Federal regulations.

DATES: We will accept written comments until 4 p.m., c.s.t., January 10, 2002.

ADDRESSES: You should mail or hand deliver written comments to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Louisiana program, the amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430

Department of Natural Resources, Office of Conservation, Injection and Mining Division, 625 N. 4th Street, P. O. Box 94275, Baton Rouge, LA 70804, Telephone: (225) 342–5540

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Louisiana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior approved the Louisiana program on October 10, 1980. You can find background information on the Louisiana program, including the Secretary's findings and the disposition of comments in the October 10, 1980, **Federal Register** (45 FR 67340). You can find later actions concerning the Louisiana program at 30 CFR 918.15 and 918.16.

II. Discussion of the Proposed Amendment

By letter dated August 3, 2001 (Administrative Record No. LA–366.04), Louisiana sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Louisiana sent the amendment in response to our letters dated August 23, 2000, and March 14, 2001 (Administrative Record Nos. LA–366 and LA–366.03, respectively), that we sent to Louisiana under 30 CFR 732.17(c).

We announced receipt of the amendment in the September 20, 2001, **Federal Register** (66 FR 48393) and invited public comment on its adequacy. The public comment period closed October 22, 2001.

During our review of the amendment, we identified concerns about the proposed amendment. We notified Louisiana of these concerns by letter dated November 14, 2001 (Administrative Record No. LA–366.08). By letter dated November 20, 2001, Louisiana sent us a revised amendment (Administrative Record No. LA–366.09).

Louisiana submitted additional revisions for the following provisions of the amendment:

A. Section 105, Definition of Valid Existing Rights

Louisiana proposes to add a provision at paragraph c.4 of its proposed definition to provide that a person who claims valid existing rights to use or construct a road across the surface of protected lands may demonstrate that valid existing rights exist under § 105.Valid Existing Rights a and b.

B. Section 1105, Areas Where Mining Is Prohibited or Limited

Louisiana proposes to revise the introductory language of this section to read as follows:

No surface coal mining operation shall be conducted on the following lands unless the applicant has either valid existing rights, as determined under § 2323, or qualifies for the exception under § 1109.

C. Section 1107, Procedures

1. Louisiana proposes to add a new § 1107.B to provide that the office will reject any portion of a permit application that would locate surface coal mining operations on lands protected under § 1105 unless (1) the site qualifies for the exception for existing operations under § 1109; (2) a person has valid existing rights for the land, as determined under § 2323; (3) the applicant obtains a waiver or exception from the prohibitions of § 1105 in accordance with § 1107.C or D; or (4) for lands protected by § 1105.a.3. both the office and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with § 1107.E.

2. Louisiana proposes to redesignate existing § 1107.B as new § 1107.C, and revise it to read as follows:

1. If the office is unable to determine whether the proposed operation includes land within an area specified in § 1105.A.1. or is located closer than the limits provided in § 1105.A.6 or 7, the office shall transmit a copy of the relevant portions of the permit application to the federal, state, or local government agency with jurisdiction over the protected land, structure, or feature for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within 30 days of receipt of the request. The notice must specify that another 30 days is available upon request, and that the office will not necessarily consider a response received after the comment period provided. If no response is received within the 30-day period or within the extended period granted, the office may make the necessary determination based on the information it has available.

3. Louisiana proposes to redesignate existing § 1107.C as new § 1107.D, and add a sentence at the beginning that states that the provisions of § 1107.D do not apply to lands for which a person has valid existing rights, as determined under § 2323; lands within the scope of the exception for existing operations in § 1109; or access or haul roads that join a public road, as described in § 1105.A.4.b.

4. Louisiana proposes to redesignate existing § 1107.D as new § 1107.E, and add a sentence at the beginning that states that the provisions of § 1107.E do not apply to lands for which a person has valid existing rights, as determined under § 2323; lands within the scope of the exception for existing operations in § 1109; or access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in § 1105.A.5.

5. Louisiana proposes to redesignate existing § 1107.E as new § 1107.F, and revise it to read as follows:

1. Where the office determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the office shall transmit to the federal, state, or local agency with jurisdiction over the park or place a copy of applicable parts of the permit application, together with a request for the agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond. The notice must specify that another 30 days is available upon request, and that failure to interpose a timely objection will constitute approval. The office may not issue a permit for a proposed operation subject to the provisions of this paragraph unless all affected agencies jointly approve.

2. § 1107.F does not apply to lands for which a person has valid existing rights, as determined under § 2323 or lands within the scope of the exception for existing operations in § 1109.

6. Finally, Louisiana proposed to delete existing § 1107.F and G.

D. Section 1109, Exception for Existing Operations

Louisiana proposes to add this new section to provide that the prohibitions of § 1105 do not apply to surface coal mining operations for which a valid permit, issued under Subpart 3 of the Louisiana Surface Mining Regulations, exists when the land comes under the protection of § 1105. This exception applies only to lands within the permit area as it exists when the land comes under the protection § 1105.

E. Section 2323, Valid Existing Rights Determination

1. Louisiana proposes to add new § 2323.A to describe when the office is responsible for making valid existing rights determinations.

2. Louisiana proposes to redesignate proposed § 2323.A as new § 2323.B, and revise it to describe what an applicant must submit when a request for a valid existing rights determination relies on the various standards described in § 105.Valid Existing Rights.b, b.i, b.ii, and c.

3. Louisiana proposes to redesignate proposed § 2323.B as new § 2323.C, and correct references throughout to reflect the changes made in this proposed rule.

4. Louisiana proposes to redesignate proposed § 2323.C as new § 2323.D, delete the sentence at new § 2323.D.1 that provides that OSM will publish a public notice in the **Federal Register**, and correct references throughout new § 2323.D to reflect the changes made in this proposed rule.

5. Louisiana proposes to redesignate proposed § 2323.D as new § 2323.E, correct references throughout to reflect the changes made in this proposed rule, and replace the phrases "agency responsible for making the determination of valid existing rights," "responsible agency," and "agency" with the word "office." Louisiana also proposes to delete the sentence at new § 2323.E.5.b that provides that OSM will publish its determination, along with an explanation of appeal rights and procedures, in the **Federal Register**.

6. Louisiana proposes to redesignate proposed § 2323.E and F as new § 2323.F and G, and correct references throughout to reflect the changes made in this proposed rule. Louisiana also proposes to replace the phrases "agency responsible for processing a request subject to notice and comment under § 2323.C," "agency, when acting as the regulatory authority," and "agency" with the word "office."

F. Miscellaneous Changes

Finally, Louisiana proposes to make a number of cross-reference changes in §§ 1105.A.4.b, 2311.B, 2731.A.2, 2733, 3103.A.5, and 3115.A.4.c to reflect the changes made in this proposed rule. Louisiana also proposes to correct a typographical error in § 2111.

III. Public Comment Procedures

We are reopening the comment period on the proposed Louisiana program amendment to provide you an opportunity to reconsider the adequacy of the amendment in light of the additional materials sent to us. Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Louisiana program.

Written Comments: If you submit written comments on the proposed rule during the 15-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Availability of Comments. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Tulsa Field Office (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that 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 because each 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 the Federal regulations at 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.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because 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 certifies 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 this 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. 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.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C.804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 10, 2001.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 01–31615 Filed 12–21–01; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–155]

RIN 2115–AA97

Safety Zone; Vessel Launches, Bath Iron Works, Kennebec River, Bath, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a 150-yard radius safety zone around the Bath Iron Works facility dry dock in Bath, Maine to be activated when the dry dock is deployed and positioned into its dredged basin hole near the center of the Kennebec River. This safety zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with positioning a 700-foot dry dock near the center of the river to launch and recover large vessels.

DATES: Comments and related material must reach the Coast Guard on or before February 25, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office, Portland, 103 Commercial Street, Portland, Maine 04101. The Port Operations Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Portland between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) W.W. Gough, Ports and Waterways Safety Branch Chief, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD01–01–155, indicate the specific section of this document to which each comment applies, and give reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in the view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Portland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Bath Iron Works facility in Bath, Maine recently acquired a 700-foot dry dock. This dry dock needs to be pulled away from shore to be placed in a dredged basin near the center of the Kennebec River in order to submerge to be able to launch and recover vessels. This position in the dredged basin is just to the south and southwest of Red Nun Buoy Number "34." The Captain of the Port, Portland, Maine proposes to establish a permanent moving safety zone around the dry dock when it is being moved from its moored position at the Bath Iron Works facility to its deployed location in the dredged basin of the Kennebec River, and from its deployed location back to its mooring. The Captain of the Port, Portland, Maine also proposes to establish a permanent safety zone around the dry dock while it is in its deployed position in the waters of the Kennebec River. The safety zone would restrict entry into waters of the Kennebec River within a 150-yard radius from the dry dock. This safety zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with positioning a 700-foot dry dock near the center of the river and with launching and recovering large vessels.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary for the following reasons: this safety zone would only be activated temporarily when the dry dock is relocated to its launch and recovery position and during vessel launch and recovery; the safety zone only restricts movement in a portion of the Kennebec River allowing vessels to safely navigate around the zone without delay; the maritime community will be notified of the restrictions via broadcast notice to mariners; and there will be advanced coordination of vessel traffic around the safety zone to minimize the effect on commercial vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would effect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant (Junior Grade) W.W. Gough, Ports and Waterways Safety Branch Chief, Captain of the Port, Portland, Maine at (207) 780–3251.

Collection of Information

This rule contains no collection of information requirements under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and have determined that this rule does not have sufficient federalism implications for Federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An Unfunded Mandate is a regulation that requires a state, local or tribal government or the private sector to incur costs without the Federal government's having first provided the funds to pay those costs. This rule will not impose an Unfunded Mandate.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribe, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

Energy Effects

The Coast Guard has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Redesignate § 165.103 as § 165.108.

3. Add new § 165.103 to read as follows:

§ 165.103 Safety Zone; vessel launches, Bath Iron Works, Kennebec River, Bath, Maine.

(a) *Location.* The following is a safety zone: all waters of the Kennebec River within a 150-yard radius of the Bath Iron Works dry dock while it is being moved to and from its moored position at the Bath Iron Works Facility in Bath, Maine to a deployed position in the Kennebec River, and while launching or recovering vessels.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

Dated: November 26, 2001.

M.P. O'Malley,

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

[FR Doc. 01–31658 Filed 12–21–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[DC001–1000; FRL–7121–8]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; District of Columbia; Department of Health

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the District of Columbia (the District) Department of Health's (DoH's) request for delegation of authority to implement and enforce its hazardous air pollutant general provisions and hazardous air pollutant emission standards for perchloroethylene dry cleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, halogenated solvent cleaning, and publicly owned treatment works, as well as the test methods, which have been adopted by reference from the Federal requirements set forth in the *Code of Federal Regulations* (CFR). This proposed approval will automatically delegate future amendments to these regulations once the District incorporates these amendments into its regulations. In addition, EPA is proposing to approve of DoH's mechanism for receiving delegation of future hazardous air pollutant regulations. This mechanism entails DoH's incorporation by reference of the unchanged Federal standard into its hazardous air pollutant regulation, DoH's notification to EPA of such incorporation and DoH's submission of a delegation request letter to EPA following EPA notification of a new Federal requirement. This action pertains only to affected sources, as defined by the Clean Air Act's hazardous air pollutant program. In the Final Rules section of this **Federal Register**, EPA is approving the District of Columbia's request for delegation of authority as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period.

Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before January 25, 2002.

ADDRESSES: Written comments on this action should be sent concurrently to: Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Mail Code 3AP11, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, and Donald E. Wambsgans II, Program Manager of the Air Quality Division, District of Columbia Department of Health, 825 North Capital Street, NE, Suite 400, Washington, DC 20002. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the District of Columbia Department of Health, 825 North Capital Street, NE, Suite 400, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Dianne J. McNally, 215–814–3297, at the EPA Region III address above, or by e-mail at *mcnally.dianne@epa.gov*. Please note that any formal comments must be submitted, in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information on this action, pertaining to approval of the District DoH's delegation of authority for the hazardous air pollutant general provisions and hazardous air pollutant emission standards for perchloroethylene dry cleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, halogenated solvent cleaning, and publicly owned treatment works, as well as the relevant test methods, please see the direct final rule, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: December 11, 2001.

Judith M. Katz,

Director, Air Protection Division, Region III.

[FR Doc. 01–31486 Filed 12–21–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[LA–55–1–7485b; FRL–7121–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Louisiana; Redesignation of Lafourche Parish Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a redesignation request from the State of Louisiana that redesignates Lafourche Parish from nonattainment to attainment for the 1-hour ozone National Ambient Air Quality Standard.

DATES: Written comments must be received by January 25, 2002.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Thomas Diggs at (214) 665–7214.

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's redesignation request as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comment, EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

For additional information, see the direct final rule located in the "Rules and Regulations" section of this **Federal Register**.

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

Dated: December 10, 2001.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 01–31484 Filed 12–21–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7121–2]

Tennessee: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Tennessee has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Tennessee. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments so that they are received by January 25, 2002.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303–3104; (404) 562–8440. You can

examine copies of the materials submitted by Tennessee during normal business hours at the following locations: EPA Region 4 Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104; Phone number: (404) 562–8190, or the Tennessee Department of Environment and Conservation, Division of Solid Waste Management, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303–3104; (404) 562–8440.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: October 22, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–31490 Filed 12–21–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7120–9]

Kentucky: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Kentucky has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Kentucky. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments so that they are received by January 25, 2002.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303–3104; (404) 562–8440. You can examine copies of the materials submitted by Kentucky during normal business hours at the following locations: EPA Region 4 Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104; Phone number: (404) 562–8190, or the Kentucky Department for Environmental Protection, Division of Waste Management, Fort Boone Plaza, Building 2, 18 Reilly Road, Frankfort, Kentucky 40601; (502) 564–6716.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303–3104; (404) 562–8440.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: October 17, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–31488 Filed 12–21–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2867, MM Docket No. 01–335, RM–10338]

Digital Television Broadcast Service; Charleston, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Media General Communications, Inc., licensee of station WCBD–TV, NTSC channel 2, Charleston, South Carolina, requesting the substitution of DTV channel 50 for station WCBD–TV's assigned DTV channel 59. DTV Channel 50 can be allotted to Charleston, South Carolina, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 32–56–24 N. and 79–41–45 W. As requested, we propose to allot DTV Channel 50 to Charleston with a power of 1000 and a height above average terrain (HAAT) of 561 meters.

DATES: Comments must be filed on or before February 4, 2002, and reply comments on or before February 19, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John R. Feore, Jr., Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–6802 (Counsel for Media General Communications, Inc.)

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–335, adopted December 13, 2001, and released December 14, 2001. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under South Carolina is amended by removing DTV Channel 59 and adding DTV Channel 50 at Charleston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief Video Services Division, Mass Media Bureau.

[FR Doc. 01–31560 Filed 12–21–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2847; MM Docket No. 01–223; RM–10157]

Radio Broadcasting Services; Crystal Beach and Stowell, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, withdrawal.

SUMMARY: This document dismisses a petition for rule making filed by Tichenor License Corporation requesting the substitution of Channel 287C3 for Channel 287A at Crystal Beach, Texas and reallotment of Channel 287C3 to Stowell, Texas. *See* 66 FR 48108, September 18, 2001. Tichenor License Corporation withdrew its interest in the allotment of Channel 287C3 at Stowell, Texas.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–223, adopted November 28, 2001, and released December 7, 2001. The full text of this Commission decision is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–31561 Filed 12–21–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants, Notice of Reinstatement of the 1993 Proposed Listing of the Flat-tailed Horned Lizard as a Threatened Species and the Reopening of The Comment Period on The Proposed Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reinstatement of proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announces the reinstatement of the 1993 proposed listing of the flat-tailed horned lizard (*Phrynosoma mcallii*) as a threatened species, and the reopening of the public comment period on this proposed listing. On November 29, 1993, we published a rule proposing threatened status for the flat-tailed horned lizard, pursuant to the Endangered Species Act of 1973, as amended (Act). On July 15, 1997, we withdrew the proposed rule to list the flat-tailed horned lizard as threatened based on information available at that time. On July 31, 2001, the Ninth Circuit Court of Appeals vacated an earlier ruling from the District Court for the Southern District of California that upheld the withdrawal of the proposed listing of the lizard as threatened. Moreover, the Ninth Circuit directed the District Court to remand the withdrawal decision to the Service for consideration in accord with the legal standards outlined in its opinion. On October 24, 2001, the District Court remanded the matter to the Service and, with the parties consent, ordered the Service to reinstate the 1993 proposed listing for the flat-tailed horned lizard within 60 calendar days, and complete the final listing decision within 12 months from the date of reinstatement. Consequently, we are hereby providing notice that the 1993 proposed rule for the flat-tailed horned lizard is reinstated, and that we will complete a final listing decision for the flat-tailed horned lizard by December 26, 2002.

In addition, we are reopening the public comment period for 120 days on the 1993 proposed listing rule to obtain information concerning the current status, ecology, distribution, threats to, and management/conservation efforts in place for the flat-tailed horned lizard to make a new final listing determination based on the best scientific and commercial data currently available.

DATES: We will consider comments on this proposal received by the close of business on April 25, 2002. Any comments that are received after the closing date may not be considered in the final decision on this action. Requests for a public hearing must be received by February 11, 2002.

ADDRESSES: Comments: If you wish to comment on the reinstated proposed rule or provide additional information concerning the status of the species, you may submit your comments and materials by any one of several methods: You may submit written comments and information to Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. You may hand-deliver written comments to our Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. You may send comments by electronic mail (e-mail) to *fthl@r1.fws.gov*.

For further information or a copy of the proposed rule contact: Ms. Sandy Vissman or Mr. Christopher Otahal, Carlsbad Fish and Wildlife Office, at the above address (telephone 760–431–9440; facsimile 760–431–9624).

SUPPLEMENTARY INFORMATION: The flat-tailed horned lizard is a small, cryptically colored, lizard that reaches a maximum adult body length (excluding the tail) of approximately 81 millimeters (3.2 inches). The lizard has a flattened body, short tail, and dagger-like head spines like other horned lizards. It is distinguished from other horned lizards in its range by a dark vertebral stripe, two slender elongated occipital spines, and the absence of external ear openings. The upper surface of the flat-tailed horned lizard is pale gray to light rusty brown. The underside is white and unmarked, with the exception of a prominent umbilical scar.

The flat-tailed horned lizard is endemic (restricted) to the Sonoran Desert in southern California and

Arizona and in northern Mexico. The species inhabits desert areas of southern Riverside, eastern San Diego, and Imperial counties in California; southwestern Arizona; and adjacent regions of northwestern Sonora and northeastern Baja California Norte, Mexico. Within the United States, populations of the flat-tailed horned lizard are concentrated in portions of the Coachella Valley, Ocotillo Wells, Anza Borrego Desert, West Mesa, East Mesa, and the Yuma Desert in California; and the area between Yuma and the Gila Mountains in Arizona. The flat-tailed horned lizard occurs at elevations up to 520 meters (m) (1700 feet (ft)) above sea level, but most populations are below 250 m (820 ft) elevation.

According to Hodges (1997), approximately 51.2 percent of the historic range of the flat-tailed horned lizard habitat within the United States remains. This remaining habitat includes an estimated 503,500 hectares (ha) (1,244,00 acres (ac)) of habitat in the United States, of which approximately 56,800 ha (140,300 ac) occur in Arizona and 446,670 ha (1,103,800 ac) occur in California. Within this range, the lizard typically occupies sparsely vegetated, sandy desert flatlands with low plant species diversity, but it is also found in areas with small pebbles or desert pavement, mud hills, dunes, alkali flats, and low, rocky mountains.

Based on information obtained since the withdrawal of the proposed listing rule and the information documented in the proposed rule itself, threats to the flat-tailed horned lizard may include one or more of the following: Commercial and residential development, agricultural development, off-highway vehicle activity, energy developments, military activities, introduction of nonnative plants, pesticide use, and border patrol activities along the United States-Mexican border.

In 1982, we first identified the flat-tailed horned lizard as a category 2 candidate for listing under the Act (47 FR 58454). Service regulations defined category 2 candidate species as "taxa for which information in the possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not currently available to support proposed rules. In 1989, we elevated the species to category 1 status (54 FR 554). Category 1 included species "for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule." Subsequently, on November 29, 1993, we published a proposed rule to list the flat-tailed horned lizard as a threatened species (58 FR 62624).

On May 16,1997, in response to a lawsuit filed by the Defenders of Wildlife to compel us to make a final listing determination on the flat-tailed horned lizard, the District Court in Arizona ordered the Service to issue a final listing decision within 60 days. A month after the District Court's order, several State and Federal agencies signed a Conservation Agreement (CA) implementing a recently completed range-wide management strategy to protect the flat-tailed horned lizard. Pursuant to the CA, cooperating parties agreed to take voluntary steps aimed at "reducing threats to the species, stabilizing the species" populations, and maintaining its ecosystem.'

On July 15, 1997, we issued a final decision to withdraw the proposed rule to list the flat-tailed horned lizard as a threatened species (62 FR 37852). The withdrawal was based on three factors: (1) Population trend data did not conclusively demonstrate significant population declines; (2) some of the threats to the flat-tailed horned lizard habitat had grown less serious since the proposed rule was issued; and (3) the belief that the recently approved "conservation agreement w[ould] ensure further reductions in threats."

Six months following our withdrawal of the proposed listing rule, the Defenders of Wildlife filed a lawsuit challenging our decision. On June 16, 1999, the District Court for the Southern District of California granted summary judgement in our favor upholding the Service's decision not to list the flat-tailed horned lizard. However, on July 31, 2001, the Ninth Circuit Court of Appeals reversed the lower court's ruling and directed the District Court to remand the matter back to the Service for further consideration in accord with the legal standards outlined in its opinion. On October 24, 2001, the District Court ordered the Service to reinstate the previously effective proposed listing rule within 60 calendar days and, thereafter, commence a 12-month statutory time schedule for a final listing decision.

This notice announces the reinstatement of the 1993 proposed rule to list the flat-tailed horned lizard as a threatened species, and reopens the public comment period on this reinstated rulemaking. The public comment period is being opened for 120 days to accept public comment on the reinstated proposed rule to list the flat-tailed horned lizard as a threatened species and gather updated information concerning its ecology and distribution, threats, conservation/management actions, and any additional available information to assist us in making a final listing determination based on the best scientific and commercial data available.

We are specifically seeking information that has become available concerning the flat-tailed horned lizard since the last public comment period on the proposed rule which closed on June 9, 1997. Information is particularly requested concerning: (1) Threats to the species as a whole or to local populations, (2) the size, number, and/or distribution of known populations, (3) sufficiency of current conservation/management and/or regulatory mechanisms for the flat-tailed horned lizard, and (4) the conservation value of different populations across the range of the species.

Please send written comments to the address listed above (see **ADDRESSES** section). When submitting comments via e-mail, please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include your name and return e-mail address in your e-mail message. Please note that the e-mail address will be closed out at the termination of the public comment period. If you do not receive confirmation from the system that we have received your e-mail message, contact us directly by calling our Carlsbad Fish and Wildlife Office at telephone number 760/431–9440.

Comments and materials received, as well as supporting documentation used in the preparation of the proposed rule and subsequent withdrawal, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office.

Author: The primary author of this notice is Mr. Christopher Otahal. (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 10, 2001.

Steve Thompson,

Acting Manager, California/Nevada Operations Office, Region 1.

[FR Doc. 01–31734 Filed 12–21–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000629197–1282–02; I.D. 032900A]

RIN 0648–AN06

Atlantic Highly Migratory Species; Monitoring of Recreational Landings

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

ACTION: Proposed rule; request for comments; public hearings.

SUMMARY: NMFS proposes this rule to amend regulations governing Atlantic billfish and North Atlantic swordfish recreational fisheries to implement recommendations adopted at the 2000 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and to enhance management programs for these species. NMFS proposes to implement a mandatory recreational landings reporting system for Atlantic blue marlin, Atlantic white marlin, west Atlantic sailfish, and North Atlantic swordfish. In addition, NMFS proposes to establish a recreational retention limit for North Atlantic swordfish; to add handlines as an authorized gear for North Atlantic swordfish; to clarify language concerning applicability of recreational retention limits for sharks, yellowfin tuna, and North Atlantic swordfish; to clarify language regarding the Billfish Certificate of Eligibility and to develop an outreach program to promote the use of circle hooks within the recreational swordfish fishery. The intent of these actions is to improve monitoring and conservation of overfished Atlantic billfish and swordfish stocks. NMFS will hold three hearings regarding these proposed amendments.

DATES: Written comments on the proposed rule must be received by 5 p.m. on February 25, 2002. NMFS will hold public hearings on the following dates:

3. January 14, 2002—Mobile, AL

1. January 23, 2002—Fort Lauderdale, FL

2. January 22, 2002—Manteo, NC

ADDRESSES: The meeting locations are:

1. Broward County Main Library, 100 S. Andrews Ave., Bienes Center, 6th Floor, Fort Lauderdale, FL 33301.

2. North Carolina Aquarium, Airport Road, Manteo, NC 27954.

3. Mobile Public Library, Cottage Hill Branch, 5025 Cottage Hill Road, Mobile, AL 36609.

Comments on the proposed rule may also be submitted by mail to the Highly Migratory Species (HMS) Division, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or on the Internet. Comments regarding the collection-of-information requirement contained in this proposed rule should be sent to the HMS Division, 1315 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of the Draft Environmental Assessment/Regulatory Impact Review (EA/RIR) for this proposed rule may be obtained from the Highly Migratory Species Division, Southeast Regional Office, 727–570–5447. The EA/RIR may also be viewed on the Highly Migratory Species Division website at *www.nmfs.noaa.gov/sfa/hmspg.html*.

FOR FURTHER INFORMATION CONTACT: Michael Barnette at 727–570–5447 or Jill Stevenson at 301–713–2347; fax: 727–570–5656; email: michael.barnette@noaa.gov or jill.stevenson@noaa.gov.

SUPPLEMENTARY INFORMATION: Atlantic HMS are managed under the Fishery Management Plan for Atlantic Billfish (Atlantic Billfish FMP) and the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). The FMPs are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at 50 CFR part 635. In addition, billfish, swordfish and tunas are managed throughout the Atlantic Ocean by ICCAT, to which the United States is a contracting party. The Secretary of Commerce has the responsibility, under the Atlantic Tunas Convention Act (ATCA), to implement ICCAT recommendations.

Atlantic Blue and White Marlin

At the November, 2000 meeting, ICCAT developed a two-phased rebuilding plan for Atlantic blue and white marlin. The rebuilding strategy was based on the results of the most recent stock assessments completed by ICCAT's Standing Committee for Research and Statistics (SCRS). The July 2000 assessment indicated that Atlantic marlin stocks are not rebuilding and continue to be overfished. Specifically, Atlantic blue marlin stocks are about 40 percent of the level needed to support maximum sustainable yield (MSY) and white marlin stocks are about 15 percent of the level needed to support MSY.

Phase One of the ICCAT Atlantic marlin rebuilding plan requires that countries capturing marlin in commercial fisheries reduce Atlantic blue marlin landings by 50 percent and white marlin landings by 67 percent from 1999 levels. Furthermore, the United States agreed to limit annual landings by U.S. recreational fishermen to 250 Atlantic blue and white marlin, combined, for 2001 and 2002, and to maintain regulations that have prohibited retention of marlins by U.S. pelagic longline fishermen since the implementation of the 1988 Atlantic Billfish FMP.

In Phase Two of the rebuilding plan, the SCRS will conduct stock assessments of Atlantic blue and white marlin in 2002 and present its evaluation of specific stock recovery scenarios that take into account the new stock assessments and any re-evaluation of the historical catch and effort time series. Based on the advice of the SCRS at its 2002 meeting, ICCAT will, as necessary, develop and adopt programs to rebuild Atlantic blue and white marlins to levels that would support MSY. Such rebuilding programs will include a timetable for recovery to a scientifically derived goal, with associated milestones and biological reference points.

North Atlantic Swordfish

A 1996 assessment of North Atlantic swordfish stock by the SCRS indicated that swordfish were overfished and that the biomass was estimated to be 58 percent of the biomass needed to produce MSY. A 1999 stock assessment indicated that the decline in swordfish biomass has been slowed or arrested and that biomass was 65 percent of the biomass needed to produce MSY. However, the SCRS cautioned that the North Atlantic swordfish recovery plan is very sensitive to any increases in fishing mortality due to overharvest of landing quotas, increased dead discards, or to increases in the proportion of juvenile fish taken in the fisheries.

The U.S. recreational swordfish fishery has been re-emerging after a period of relatively low activity, though recent catches are still below historical levels achieved when the stock was more abundant. In recent years, recreational fishing effort for swordfish has evolved from incidental catches related to yellowfin tuna trips in the Mid-Atlantic Bight to a rapidly growing directed fishery off Florida, New York, and New Jersey. There is concern that

this expansion is not being effectively monitored and that, therefore, mortality of both legal and undersized swordfish cannot be accurately estimated for the recreational fishery.

Effective April 1, 2001, NMFS implemented a closed area off the east coast of Florida that was specifically aimed at reducing dead discards of swordfish in the pelagic longline fishery (65 FR 47214, August 1, 2001). This area remains open to handgear fishermen, and, while many swordfish are released alive, it is anticipated that further increases in recreational effort could result in increased mortality of undersized swordfish and affect the stock rebuilding plan. Furthermore, there have been reports of swordfish being foul-hooked by recreational fishing gear due to the nature of swordfish feeding behavior. Injuries sustained by the fish could impair recovery and result in delayed mortality even if the fish appears to be released in good condition.

Recreational Catch of Sailfish

In 1992, ICCAT scientists completed a stock assessment for west Atlantic sailfish/spearfish and deemed the populations to be fully fished. Since that time, there has not been a complete stock assessment due to a lack of specific data (internationally, sailfish are often reported combined with spearfish species in logbooks). In 2001, ICCAT scientists evaluated sailfish catches independently of spearfish catches, however, considerable uncertainties remain related to catches and catch rates. The stock is considered to be fully fished. Abundance indices have remained relatively stable over the last 20 years. However, population models have not been successfully used to predict the dynamics of this stock. Recreational landings in the United States are not well monitored by existing surveys because of their rare-event nature. NMFS anticipates that a recreational call-in monitoring system would improve the quality of data that the United States submits to ICCAT annually and which would be used in future stock assessments.

Current Catch Management Programs

The primary issue for the United States resulting from the 2000 ICCAT recommendation for Atlantic blue and white marlin is determining the appropriate management strategy to ensure compliance with the annual limit of 250 marlin landings for 2001 and 2002. Monitoring recreational landings of Atlantic billfish is challenging because of the broad geographic range over which Atlantic blue and white marlin can potentially be caught and landed by U.S. recreational anglers. While U.S. recreational anglers predominantly practice a catch-and-release fishery, a limited number of billfish are landed, particularly in association with fishing tournaments. The recreational billfish fishery within the U.S. Exclusive Economic Zone (EEZ), including U.S. territories, is monitored primarily through the NMFS Recreational Billfish Survey (RBS). The RBS mainly focuses on fishing tournament data but does include a limited number of Atlantic billfish landings outside tournaments. While landings reporting for HMS tournaments is becoming more comprehensive due to the tournament registration requirement adopted in Amendment 1 to the Atlantic Billfish FMP (Billfish Amendment), the level of recreational fishing effort directed at billfish that occurs outside the tournament context is highly uncertain.

Billfish landings outside tournaments are occasionally noted by dockside interviewers conducting the Marine Recreational Fisheries Statistical Survey (MRFSS) or the Large Pelagics Survey (LPS), but such low frequency sampling cannot yield precise estimates of total landings. Additionally, landings from U.S. vessels in foreign ports are not at present effectively monitored though all landings from vessels of the United States must be assessed against the landing limit. Some improvements in monitoring of recreational billfish landings are anticipated as the HMS Charter/Headboat permit, vessel logbook, and at-sea observer programs that were developed as part of the HMS FMP and Billfish Amendment become fully implemented. However, it is unlikely that these programs, taken together, will be sufficient to monitor all recreational Atlantic billfish landings.

NMFS published an Advanced Notice of Proposed Rulemaking (ANPR) to solicit comments on options which would support ICCAT's objectives. Options ranged from restricting minimum size limits to reduce landings to implementing upgraded monitoring programs (65 FR 48671, August 9, 2000). Comments received were generally supportive of the need to increase monitoring of recreational landings.

Several commenters supported a mandatory landings tag program, either with an unlimited number of tags available or a more complex controlled distribution system. Such a program would be costly for the agency and may be more burdensome for fishermen.

A few comments supported a port sampling program that could be implemented through cooperative agreements with coastal states. Other commenters recommended requiring a recreational billfish permit and periodic reporting requirements through logbooks. While NMFS is not proposing a permit requirement in this rule, a permit requirement may be implemented in the future to provide a more complete sample frame for surveying recreational HMS fishermen.

Other commenters were concerned about double counting of billfish and therefore opposed self-reporting, post cards, fishing club reports, or a landing tag program. NMFS has similar concerns with respect to monitoring the expanding recreational swordfish fishery. While the LPS dockside intercept survey focuses on fishing sites with high activity for HMS, interviewers could encounter anglers landing swordfish only off the Mid-Atlantic region due to lack of LPS coverage in the South Atlantic, Gulf of Mexico, and Caribbean at this time. Therefore, comprehensive information on landings from the expanding recreational swordfish fishery off Florida is not available through the LPS. Although the MRFSS has a broader area of coverage, day-time interviewers are not likely to sample swordfish due to the nocturnal nature of the fishery.

Given the limitations of existing recreational fishing monitoring programs with respect to Atlantic billfish and swordfish, NMFS believes that additional measures are needed to ensure compliance with applicable ICCAT recommendations and to provide data for improving stock assessments. The NMFS is issuing this proposed rule, and seeks additional public comments to address these concerns.

Enhanced Monitoring Program

To ensure compliance with ICCAT recommendations and to further domestic fishery management goals, NMFS proposes to monitor Atlantic sailfish, blue and white marlin, and North Atlantic swordfish recreational landings through a self-reporting method based on a toll-free telephone call-in system. Such a call-in system would collect catch information for all landings made from U.S. fishing vessels, including landings made in foreign ports. To avoid duplication, landings reported through a registered HMS tournament would be exempt from the telephone call-in requirement. The toll-free call would take less than 5 minutes for each response, and the reporting requirement would likely amount to less than 500 calls per year. NMFS anticipates a high level of compliance based on the conservation ethic and interest in resource conservation by

recreational Atlantic billfish and swordfish anglers. To foster support, the call-in requirement for non-tournament landings would be advertised through public outreach with constituent groups, sport fishing magazines, fishing tournaments, Fishery Management Councils, and Billfish and HMS Advisory Panel members.

In addition to improving estimates of landings made outside tournaments, mandatory reporting of billfish and swordfish landings via the call-in system would provide additional data on the recreational fishery and improve future stock assessments. Information on fishing locations and ports of landing would enable NMFS to tailor existing dockside and telephone surveys to better assess effort and catch rates in the recreational billfish and swordfish fisheries.

Recreational Retention Measures

In light of the recent expansion in the recreational swordfish fishery, NMFS also proposes to revise regulations at § 635.22 to implement a recreational retention limit for North Atlantic swordfish of one swordfish, per vessel, per trip. This recreational possession limit would apply to all vessels and is intended to establish long-term stability within the recreational fishery, and to reduce the incentive for unauthorized sale of swordfish landed in the recreational fishery. Those vessel operators who wish to pursue a commercial handgear fishery could seek to purchase a swordfish handgear limited access permit. Only fishermen with such limited access permits are exempt from the recreational retention limit and are authorized to sell swordfish.

Additionally, NMFS proposes to revise regulations at § 635.21 to clarify that only certain gear is authorized for recreational fishing for Atlantic swordfish. Prior to the publication of the HMS FMP and consolidation of Atlantic HMS regulations under new part 635 of the Code of Federal Regulations (CFR) (64 FR 29090, May 28,1999), regulations governing the Atlantic swordfish fisheries existed under 50 CFR part 630. Regulatory text at § 630.2 specified that recreational harvest of swordfish was limited to fish taken by rod and reel gear. While that specific restriction was included in the initial proposed consolidated HMS regulations (61 FR 57361, November 6, 1996), it was not explicitly re-stated when the consolidated regulations were re-proposed to implement the new requirements of the HMS FMP (64 FR 3486, January 20, 1999).

The regulatory consolidation was not intended to make substantive changes to existing regulations, other than those specifically noted as necessary to achieve consistency or to implement new requirements of the HMS FMP. The ambiguous reference to the restriction on recreational swordfish fishing gear as it currently appears in the consolidated regulatory text under 50 CFR part 635 was a drafting error and requires the correction contained in this proposed rule. However, recognizing that there has been some historical use of this handline gear consistent with recreational fishing activity, NMFS also proposes to revise regulations at § 635.21 (d)(4) to include handlines as authorized gear in the recreational swordfish fishery.

Applicability of Recreational Retention Limits

NMFS finalized a regulatory requirement for Charter/Headboat vessel owners to obtain a permit to fish for Atlantic HMS in conjunction with publication of the final Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) (64 FR 29090, May 29, 1999). At the time of publication of the final rule, OMB had not yet approved the information collection. After receiving OMB approval, NMFS published a notification to make the permit requirement effective (66 FR 30651, June 7, 2001).

In a technical amendment to the consolidated regulations (64 FR 37700, July 13, 1999), NMFS clarified that the recreational daily retention limit of three yellowfin tuna per person applies at all times to persons fishing aboard vessels permitted with an Atlantic tunas Charter/Headboat permit. That permit is now issued as the HMS Charter/Headboat permit. Therefore, NMFS must revise the regulations pertaining to retention limits to reflect issuance of the HMS Charter/Headboat permit. In this rule, NMFS proposes to revise regulations at § 635.22 to apply recreational Atlantic yellowfin tuna and shark retention limits to HMS Charter/Headboat permit holders.

Mortality Reduction Program

To further reduce the potential for dead discards and delayed mortality of swordfish, NMFS proposes to develop an outreach program to promote the use of circle hooks within the recreational swordfish fishery. NMFS has received information indicating that use of conventional "J"-style hooks in the recreational fishery is resulting in foul-hooked fish (either in the fins or in the body) due to the aggressive nature of swordfish feeding behavior. Foul-hooked fish can receive sufficient injury to impair health which could lead to delayed mortality after release. The use of circle hooks typically results in fish being hooked in the mouth, which allows for a fish to be boated and released in better condition. Circle hooks are already being used to some extent within the recreational fishery due to their recognized ecological benefits, so it is expected that with sufficient public outreach, circle hook usage would increase.

Billfish Trade Requirements

Prior to the publication of the HMS FMP and consolidation of Atlantic HMS regulations under new part 635 of the Code of Federal Regulations (CFR) (64 FR 29090, May 28,1999), regulations governing the Atlantic billfish fisheries existed under 50 CFR part 644. Regulatory text at § 644.24 prohibited persons from selling or purchasing billfish taken from the Atlantic Ocean management unit. Billfish taken from outside the Atlantic Ocean management unit could be sold only if accompanied by documentation of its source. These regulations were necessary to implement the Billfish FMP objective of reserving harvest of Atlantic billfish for the recreational fishery.

While the specific regulations on the Billfish Certificate of Eligibility were included in the initial proposed consolidated HMS regulations (61 FR 57361, November 6, 1996), they were restated differently when the consolidated regulations were re-proposed to implement the new requirements of the HMS FMP (64 FR 3486, January 20, 1999). The regulatory consolidation was not intended to make substantive changes to existing regulations, other than those specifically noted as necessary to achieve consistency or to implement new requirements of the HMS FMP. The revisions to the Billfish COE regulations in the final consolidated regulatory text under 50 CFR part 635 were a drafting error that requires a correction to facilitate enforcement of the COE requirements as originally intended. Therefore, NMFS proposes to amend § 635.31 to clarify these provisions.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and the ATCA. The Assistant Administrator for Fisheries, NOAA (AA), has preliminarily determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to

manage the domestic Atlantic highly migratory species fisheries.

NMFS prepared a draft Environmental Assessment (EA) for this proposed rule, and the AA has preliminarily concluded that there would be no significant impact on the human environment if this proposed rule was implemented. The EA presents analyses of the anticipated impacts of these proposed regulations and the alternatives considered. A copy of the draft EA is available from NMFS (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act(PRA), unless that collection of information displays a currently valid OMB Control Number.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the PRA. The requirement for mandatory reporting, via a toll-free call-in system, of all non-tournament recreational landings of Atlantic sailfish, blue marlin, white marlin, and North Atlantic swordfish has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 5 minutes per initial reporting call and 5 minutes per confirmation callback. This proposed rule also repeats collection-of-information requirements that have been approved by OMB under control number 0648-0216. The estimated response times are 20 minutes to prepare a billfish Certificate of Eligibility and 2 minutes for recordkeeping by subsequent purchasers of the billfish.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and OMB (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel of Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule would establish a recreational landings monitoring program for Atlantic billfish and swordfish that would be based on a toll-free call-in system. The system would collect catch associated information for landings of Atlantic sailfish, blue and white marlin, and North Atlantic swordfish, taken by persons aboard U.S. fishing vessels. Additionally, the proposed rule would implement a recreational retention limit for North Atlantic swordfish of 1 swordfish, per vessel, per trip, as well as develop an outreach program to promote the use of circle hooks within the recreational swordfish fishery.

The landings monitoring call-in system would have minimal economic impact to the recreational fishing community as there would be no cost for the call and it would likely take less than 5 minutes to report. Likewise, a recreational fishing catch limit of one swordfish per vessel per trip should not have any significant economic impact on recreational anglers or associated support industries because of the relatively large size of most recreationally-landed swordfish (often 50 to in excess of 200 pounds). Finally, it is expected that the use of circle hooks would be well-received within the recreational community and that voluntary use would occur. Circle hooks are already being used to some extent within the recreational fishery due to their recognized ecological benefits in avoiding injury to fish.

Accordingly, an initial regulatory flexibility analysis was not prepared for this proposed rule.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: December 19, 2001.

Rebecca Lent,

Acting Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.5, paragraph (c) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

(c) *Anglers*—(1) *Bluefin tuna.* The owner of a vessel permitted, or required to be permitted, in the Atlantic Tunas Angling or Atlantic HMS Charter/Headboat category must report all BFT landed under the Angling category quota designated at § 635.27 (a) through the NMFS automated catch reporting system within 24 hours of the landing. Such reports may be made by calling 1–888–872–8862 or by submitting the required information over the Internet at: www.nmfspermits.com.

(2) *Billfish and swordfish.* Anglers must report all landings of Atlantic blue marlin, Atlantic white marlin, Atlantic sailfish and North Atlantic swordfish. Except for fish reported through a fishing tournament registered with NMFS, anglers must report all landings to NMFS by calling 1–800–894–5528 within 24 hours of the landing. A reported landing during a tournament must include the species, size, date, and place of landing. For telephone reports, an additional contact phone number must be provided so that NMFS can provide the angler with a confirmation of the reported landing. The landing report has not been completed unless the angler has received a confirmation number from a NMFS' designee for telephone reports or from the tournament operator for a landing made during a registered tournament.

(3) *Alternative recreational catch reporting.* Alternative recreational catch reporting procedures may be established by NMFS in cooperation with states and may include such methodologies as telephone, dockside or mail surveys, mail in or phone-in reports, tagging programs, or mandatory check-in stations. A census or a statistical sample of persons fishing under the recreational fishing regulations of this part may be used for these alternative reporting programs (after the programs have received Paperwork Reduction Act approval from OMB). Persons or vessel owners selected for reporting will be notified by NMFS or by the cooperating state agency of the requirements and procedures for reporting recreational catch. Each person so notified must comply with those requirements and procedures. Additionally, NMFS may determine that recreational landing reporting systems implemented by the states, if mandatory, at least as restrictive, and effectively enforced, are sufficient for recreational landing monitoring as required under this part. In such case, NMFS will file with the Office of the Federal Register for publication notification indicating that compliance with the state system

satisfies the reporting requirements of paragraph (c) of this section.

3. In § 635.20, paragraph (a) is revised to read as follows:

§ 635.20 Size limits.

(a) *General.* The CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas. The LJFL will be the sole criterion for determining the size of an Atlantic swordfish possessed on board, or landed from, a vessel that has not been issued a limited access swordfish permit under § 635.4.

4. In § 635.21, paragraph (d)(4)(iv) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

(d) * * *

(4) * * *

(iv) Except for persons aboard a vessel that has been issued a limited access swordfish permit under § 635.4, no person may fish for swordfish with, or possess a swordfish taken by, any gear other than handline or rod and reel.

5. In § 635.22, paragraphs (a), (c), and (d) are revised, and paragraphs (e) and (f) are added to read as follows:

§ 635.22 Recreational retention limits.

(a) *General.* Recreational retention limits apply to a longbill spearfish taken or possessed shoreward of the outer boundary of the Atlantic EEZ, to a shark taken from or possessed in the Atlantic EEZ, to a North Atlantic swordfish taken from or possessed in the Atlantic Ocean, and to bluefin and yellowfin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and for the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters.

(c) *Sharks.* One shark from the large coastal, small coastal, or pelagic group may be retained per vessel per trip, subject to the size limits described in § 635.20(e), and, in addition, one Atlantic sharpnose shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark per person may be possessed on board a vessel. No prohibited sharks listed in table 1(d) of appendix A to this part may be retained. The recreational retention limit for sharks applies to a person who fishes in any manner, except to a person aboard a vessel who has been issued a limited access vessel permit under § 635.4 for Atlantic sharks.

(d) *Yellowfin tuna.* Three yellowfin tunas per person per day may be retained. Regardless of the length of a trip, no more than three yellowfin tuna per person may be possessed on board a vessel. The recreational retention limit for yellowfin tuna applies to a person who fishes in any manner, except to a person aboard a vessel issued a vessel permit under § 635.4 for Atlantic tunas in a category other than Angling. The yellowfin tuna retention limit applies to all persons aboard a vessel issued an Atlantic Highly Migratory Species Charter/Headboat permit under § 635.4, including captain and crew.

(e) *Bluefin tuna.* Refer to § 635.23 for Atlantic bluefin tuna recreational retention limits.

(f) *North Atlantic swordfish.* One North Atlantic swordfish per vessel per day may be retained. Regardless of the length of a trip, no more than one North Atlantic swordfish may be possessed on board a vessel. The recreational retention limit for swordfish applies to a person who fishes in any manner, except to a person aboard a vessel that has been issued a limited access swordfish permit under § 635.4.

6. In § 635.30, paragraph (d) is revised to read as follows:

§ 635.30 Possession at sea and landing.

(d) *Swordfish.* Except for persons aboard a vessel that has been issued a limited access swordfish permit under § 635.4, any person who possesses an Atlantic swordfish on board a vessel or who lands an Atlantic swordfish in an Atlantic coastal port must maintain such swordfish with its head, fins, and bill intact through offloading; persons may eviscerate such swordfish, but it must otherwise be maintained whole. Persons aboard a fishing vessel that has been issued a limited access swordfish permit under § 635.4 must maintain Atlantic swordfish in either round or dressed form when possessed on board the vessel from the time of capture through offloading in an Atlantic coastal port.

7. In § 635.31, paragraph (b)(2)(ii) is revised and paragraph (b)(3) is added to read as follows:

§ 635.31 Restrictions on sale and purchase.

(b) Billfish.

(2) * * *

(ii) It is accompanied by a Billfish Certificate of Eligibility (COE) form obtained from NMFS or its equivalent that documents that the fish was harvested from other than the Atlantic Ocean management unit.

(A) The Billfish COE required under this section must indicate, in English, the name and homeport of the harvesting vessel, and the date and port of offloading. Only the purchaser of the billfish from the harvesting vessel must complete this information.

(B) The Billfish COE must be signed and dated by each dealer in possession of the product throughout the chain of custody up to but not including the consumer. This signature indicates a declaration that the billfish were not harvested from the management unit.

(C) A Billfish COE may refer to billfish taken from only one harvesting vessel. If a shipment contains billfish taken from more than one vessel, a separate billfish COE must accompany the shipment for each harvesting vessel.

(D) A model Billfish COE can be obtained by contacting the Division Chief. An equivalent form may be used provided it contains all of the information required under this section.

(3) For the purposes of this paragraph 635.31(b), a dealer or seafood processor means any individual, other than a consumer, who engages in any activity, other than fishing, of industry, trade, or commerce, including but not limited to the buying or selling of a regulated species or parts thereof and activities conducted for the purpose of facilitating such buying and selling.

[FR Doc. 01–31662 Filed 12–21–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 121701D]

Groundfish Fisheries of the Bering Sea and Aleutian Islands Area and the Gulf of Alaska

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

ACTION: Notice of meeting to review proposed work plan for preparing a revised Alaska Groundfish Fisheries Draft Programmatic Supplemental Environmental Impact Statement (SEIS) and to discuss draft multi-objective policy alternatives.

SUMMARY: On November 27, 2001, NMFS announced its intent to revise the Alaska Groundfish Fisheries draft Programmatic SEIS. After reviewing more than 21,000 comment letters received on the draft Programmatic SEIS, NMFS determined that revisions to the draft Programmatic SEIS are

appropriate and necessary. NMFS also determined that these revisions will require the release of a revised draft Programmatic SEIS. Based on these decisions, NMFS announced a new series of dates for preparing the revised draft, preparing the final programmatic SEIS, and issuing the Record of Decision.

This document announces that NMFS will hold three public meetings in Seattle, WA, and in Anchorage and Bethel, AK in January 2002 for the purpose of presenting a work plan, answering questions concerning the new work plan, and schedule, and soliciting public input on new, multi-objective policy alternatives.

DATES: See **SUPPLEMENTARY INFORMATION** under the heading "Meeting Dates and Addresses" for the dates of the public meetings.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** under the heading "Meeting Dates and Addresses" for meeting addresses.

FOR FURTHER INFORMATION CONTACT: Steven K. Davis, Programmatic SEIS Coordinator, Anchorage, AK, (907) 271–3523.

SUPPLEMENTARY INFORMATION: On November 27, 2001, NMFS issued a notice informing the public of its decision to prepare a revised draft Programmatic SEIS and release that draft for public comment prior to preparing a final Programmatic SEIS. This decision was based on the agency's review and preliminary analysis of the comments received on the draft Programmatic SEIS.

NMFS has scheduled two public meetings and is planning a third meeting in January 2002. The purpose of these meetings is to present a work plan for preparing the revised draft programmatic SEIS, answering questions concerning the work plan and schedule, and soliciting suggestions for draft multi-objective policy alternatives. The development of these new alternatives will be based on comments received on the January 2001 draft Programmatic SEIS, input received from the public at these January meetings, and on recommendations from the North Pacific Fishery Management Council (Council). The final suite of multi-objective policy alternatives will serve as the focus of the revised draft Programmatic SEIS.

Information on these meetings can also be found in the Council's December 2001 newsletter. A meeting announcement will also be mailed to the Programmatic SEIS mailing list. Additional information concerning the meeting agenda and draft multi-objective policy alternatives will be posted on the NMFS Alaska Region's website at *http://www.fakr.noaa.gov* and at the Council's website at *http://www.fakr.noaa.gov/npfmc* prior to the meetings.

Meeting Dates and Addresses

1. January 22, 2002, 9 a.m. Pacific standard time - Alaska Fisheries Science Center, 7600 Sand Point Way N.E., Building 9, Room A/B, Seattle, WA.

2. January 24, 2002, 9 a.m. Alaska local time - Federal Courthouse, 222 West 9th Avenue, Room 154, Anchorage, AK.

3. Bethel, AK. The meeting will begin at 9 a.m. Alaska local time. The location and date to be announced (see websites for information).

Special Accommodations

The meetings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Steven K. Davis (see **FOR FURTHER INFORMATION CONTACT**) at least 7 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 et seq.

Dated: December 19, 2001.

Jonathan M. Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–31659 Filed 12–21–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 247
Wednesday, December 26, 2001

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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee on Actuarial Examinations

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Director of Practice on January 10 and 11, 2002.

DATES: Thursday, January 10, 2002, from 9 a.m. to 5 p.m., and Friday, January 11, 2002 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in Suite 4200E, Conference Room, Fourth Floor, East Tower, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1805.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Suite 4200E, Conference Room, Fourth Floor, East Tower, Franklin Court Building, 1099 14th Street, NW., Washington, DC on Thursday, January 10, 2002, from 9 a.m. to 5 p.m., and Friday, January 11, 2002, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the November 2001 Pension (EA–2A) Joint Board Examination in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the May 2002 Basic (EA–1) Examination and the May 2002 Pension (EA–2B) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the November 2001 Joint Board examination fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 PM on January 11 and will continue for as long as necessary to complete the discussion, but not beyond 3 PM. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than December 31, 2001, to 202–694–1876, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director N:C:SC:DOP, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: December 17, 2001.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 01–31653 Filed 12–21–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 17, 2001.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the 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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agriculture Statistics Service

Title: Childhood Injury and Adult Occupational Survey.

OMB Control Number: 0535–0235.

Summary of Collection: Primary function of the National Agricultural Statistics Services (NASS) is to prepare and issue State and national estimates of crop and livestock production under the

authority of 7 U.S.C. 2204 (a). NASS has been asked by the National Institute of Occupational Safety Health (NIOSH) to conduct a childhood injury and adult occupational injury survey. The survey is designed to provide estimates of childhood nonfatal injury incidence and description of injury occurring to children less than 20 years of age who reside, work, or visit farms and describe the occupational injury experience of all farm operators.

Need and Use of the Information: Data from this survey will provide source of consistent information that NIOSH can use to target funds appropriated by Congress for the prevention of childhood agricultural injuries and adult occupational injuries. No source of data on childhood injuries or adult occupational farm injuries exists that covers all aspects of the agricultural production sector.

Description of Respondents: Farms.

Number of Respondents: 60,500.

Frequency of Responses: Reporting: Other.

Total Burden Hours: 12,612.

Rural Utilities Service

Title: 7 CFR Part 1744, Subpart B, Lien Accommodations and Subordination Policy.

OMB Control Number: 0572–0126.

Summary of Collection: Recent changes in the telecommunications industry, including deregulation and technological developments, have caused Rural Utilities Service (RUS) borrowers and other organizations providing telecommunications services to consider undertaking projects that provide new telecommunications services and other telecommunications services not ordinarily financed by RUS. To facilitate the financing of those projects and services, RUS is willing to consider accommodating the Government's lien on telecommunications borrowers' systems in an expedited manner based on the financial strength of the borrowers operations. The RUS telecommunications program provides loans to borrowers at interest rates and on terms that are most favorable than those generally available from the private sector.

Need and Use of the Information: Depending on the purposes for which a lien accommodation is sought, RUS will use the information to provide "automatic" approval for borrowers that meet the financial tests. These tests are designed to ensure that the financial strength of the borrowers is more than sufficient to protect the government's loan security interests; hence, the lien accommodations will not adversely affect the government's financial interests.

Description of Respondents: Business or other for-profit; Not for-profit institutions.

Number of Respondents: 30.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 23.

Animal Plant and Health Inspection Service

Title: National Animal Health Monitoring System Sheep 2001 Study.

OMB Control Number: 0579–NEW.

Summary of Collection: The Department of Agriculture is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of contagious, infectious, or communicable diseases of livestock and poultry and for eradicating such diseases from the United States when feasible. In connection with this mission, the Animal and Plant Health Inspection Service (APHIS) operates the National Health Monitoring System (NAHMS), which collects, on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock and poultry diseases. NAHMS will initiate the first national data collection for sheep through a national study, Sheep 2001. The study will take place in 22 States, which represent 88.8% of the U.S. sheep population. Collection and dissemination of animal and poultry health information is mandated by 7 U.S.C. 391, The Animal Industry Act of 1884 and 21 U.S.C. 19, "Agents to Examine and Report on Methods of Treatment of Animals, and Means for Suppression of Diseases," amended February 7, 1928.

Need and Use of the Information: APHIS will use the data collected to: (1) Predict or detect national and regional trends in disease emergence and movement, (2) address emerging issues, (3) determine the economic consequences of disease, and (4) develop trade strategies and support trade decisions. Without the data, the U.S.' ability to detect trends in management, production, and health status that increase/decrease farm economy, either directly or indirectly, would be reduced or nonexistent.

Description of Respondents: Farms; Business or other for profit; Individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 10,731.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 9,090.

Agricultural Marketing Service

Title: Filberts/Hazelnuts Grown in Oregon and Washington.

OMB Control Number: 0581–NEW.

Summary of Collection: Marketing Order No. 982 (7 CFR Part 982), covers filberts/hazelnuts grown in Oregon and Washington. This legislation was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to growers. The order was developed to stabilize marketing conditions for domestic inshell hazelnuts.

Need and Use of the Information: The information collected will provide the Board with more accurate information on the total supply of hazelnuts handled in Oregon and Washington. This will facilitate the Boards preparation of its annual marketing policy. Reports and forms are periodically reviewed to avoid duplication of information collected by industry and public sector agencies. No similar information is collected from any other organizations. Collecting data less frequently would eliminate data needed to keep the hazelnut industry and USDA abreast of changes at the State and local levels.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 5.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2.

Forest Service

Title: National Woodland Owner Survey.

OMB Control Number: 0596–0078.

Summary of Collection: The Forest and Rangeland Renewable Resources Planning Act of 1974 (Pub. L. 93–278) and the Forest and Rangeland Renewable Resources Act of 1978 (Pub. L. 307) are the legal authorities for conducting the National Woodland Owner Survey. The National Woodland Owner Survey collects information to help answer questions related to the characteristics of the landholdings and landowners, ownership objectives, the supply of timber and non-timber products, forest management practices, delivery of the concerns/constraints perceived by the landowners.

Need and Use of the Information: The Forest Service will collect information to determine the opportunities and constraints that private woodlands owners typically face and facilitate planning and implementing forest policies and programs. If the information is not collected, the knowledge and understanding of private

woodland ownerships and their concerns and activities will be severely limited.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 10,000.

Frequency of Responses: Reporting: Other (every 5 years).

Total Burden Hours: 2,500.

National Agricultural Statistics Service

Title: Wildlife Damage Surveys.

OMB Control Number: 0535–0217.

Summary of Collection: The primary objectives of the National Agricultural Statistics Service (NASS) are to provide, prepare and issue current official State and national estimates of crop and livestock production, disposition, and prices. Auxiliary services, such as statistical consultation, data collection, summary tabulation, and analysis are performed for other federal and State agencies on a reimbursable basis. NASS has entered into an agreement with the Animal and Plant Health Inspection Service (APHIS) to conduct a nationwide survey of selected field crop, livestock, poultry, vegetable, fruit, and nut producers to assess the true incidence, extent, specific cause, and monetary value of agricultural product and resource losses caused by vertebrate wildlife.

Need and Use of the Information: NASS will collect information on the development of valid statistical data reflecting the percentage of fruit, nut, and berry growers experiencing losses of products or resources and the total dollar losses at the national level caused by vertebrate wildlife. Goals of the survey are to assess the agricultural community's use and name recognition of the Wildlife Service program at a regional level, and provide accurate measurement of wildlife damage to agricultural products for use in long range planning and fund allocation.

Description of Respondents: Farms.

Number of Respondents: 12,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,700.

Farm Service Agency

Title: Certification of Livestock Losses for Eligible Disaster.

OMB Control Number: 0560–0179.

Summary of Collection: Under P.L. 106–387, Sec. 813 states "The Secretary shall use up to $10,000,000 of the funds of the Commodity Credit Corporation to make livestock indemnity payment to producers on a farm that have incurred livestock losses during calendar year 2000 due to a disaster, as determined by the Secretary, including losses due to fires and anthrax. Over the past several years, Congress has provided ad hoc funding under several appropriation bills to partially compensate producers who lost livestock because of natural disasters. Producer requesting compensation on CCC–661, Certificate of Livestock Losses for eligible Disaster must provide documentation that shows the number of type of livestock lost in the disaster.

Need and Use of the Information: The Farm Service Agency (FSA) will collect information to determine eligibility and the amount of compensation. Without obtaining the information from the producers, FSA could not carry out the statutory provisions and ensure that funds are being provided to eligible producers.

Description of Respondents: Farms.

Number of Respondents: 2,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 5,000.

Food and Nutrition Service

Title: Food Stamp Redemption Certificate.

OMB Control Number: 0584–0085.

Summary of Collection: The Food Stamp Act of 1977, requires the Department of Agriculture to issue regulations that provide for the redemption of coupons accepted by retail food stores through approved wholesale food concerns or through insured financial institutions. The Food and Nutrition Service (FNS) will provide authorized retail stores and wholesale food concerns with redemption certificates. The Redemption Certificate and Wholesaler Redemption Certificate (RCs) are used by all authorized wholesalers or retailers when depositing food stamp coupons, and are processed by financial institutions when they are presented for credit or for cash. The issuance of food stamp benefits through the Electronic Benefit Transfer (EBT) system is replacing the issuance of food coupons.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information on the verification of the amount of coupons forwarded to the bank for redemption. RCs are distributed to each authorized retailer or wholesaler by FNS for completion. FNS uses the deposit information from the RC to monitor (1) deposits by retailer and wholesale food concerns, and (2) for store monitoring and compliance purposes.

Description of Respondents: Business or other for-profit.

Number of Respondents: 155,584.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 135,947.

Food and Nutrition Service

Title: WIC Local Agency Directory Report.

OMB Control Number: 0584–0431.

Summary of Collection: The Supplemental Nutrition Program for Women, Infants, and Children (WIC) is authorized by Section 17 of the Child Nutrition Act (CAN) of 1966 (42 U.S.C. 1786, as amended. The Food and Nutrition Service (FNS) of USDA administers the WIC Program by awarding cash grants to State agencies (generally State health departments). The State agencies award subgrants to local agencies (generally local health departments and nonprofit organizations) to deliver program benefits and services to eligible participants. Local agencies authorized to furnish WIC participants with supplemental foods, nutrition education, breastfeeding promotion and support activities and referral to related health services are subject to change. New local agencies may be selected to operate the WIC Program and local agencies already in operation may be disqualified for continued operation. FNS will collect information using form FNS–648 to report additions and deletions of local agencies operating the WIC program and local agency address changes, when such changes occur.

Need and Use of the Information: The FNS will collect information to maintain a local agency directory that lists the names and addresses of all WIC local agencies. The WIC local agency directory serves as the primary source of data on the number and location of local agencies and is published annually. It is used to refer individuals to the nearest source of WIC Program services and to maintain continuity of program services to migrant and other transient participants.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 88.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 15.

Food and Nutrition Service

Title: WIC Farmers Market Nutrition Program (FMNP) Forms: 683, 203 & Regulations.

OMB Control Number: 0584–0447.

Summary of Collection: The WIC Farmers' Market Nutrition Program (FMNP) is authorized by Public Law 102–314, enacted on July 2, 1992. The purpose of the FMNP is to provide resources to women, infants, and

children who are nutritionally at risk, in the form of fresh, nutritious, unprepared foods (such as fruits and vegetables) from farmers' markets; to expand the awareness and use of farmers' markets; and, to increase sales at such markets. The Food and Nutrition Service (FNS) will collect information from each state that receives a grant under the FMNP program in conjunction with the preparation of annual financial and recipient reports.

Need and Use of the Information: FNS will collect information from the state agency administering the FMNP to develop an annual financial report on the number and type of recipients served by both Federal and non-Federal benefits under the program. The information is necessary for reporting to Congress in accordance with the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and for program planning purposes.

Description of Respondents: State, Local, or Tribal Government; Individuals or household; Business or other for-profit.

Number of Respondents: 2,009.

Frequency of Responses: Recordkeeping; Reporting; Annually.

Total Burden Hours: 4,912.

Sondra A. Blakey,

Departmental Information Clearance Officer.

[FR Doc. 01–31548 Filed 12–21–01; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Revision and Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to request extension and revision of the information collection currently approved for Form FSA 440–32, used in support of the FSA Farm Loan Programs (FLP). Form FSA 440–32 has been revised for clarification in conjunction with renewal of the paperwork burden package.

DATES: Comments on this notice must be received on or before February 25, 2002 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Bashir Duale, USDA, Farm Service Agency, Loan Making Division, 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250–0522; Telephone (202) 720–1645; Electronic mail: *bashir_duale@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form FSA 440–32, Verification of Debts and Assets.

OMB Control Number: 0560–0166.

Expiration Date of Approval: February 17, 2002.

Type of Request: Revision and Extension of a Currently Approved Information Collection.

Abstract: FSA 440–32 is necessary to ensure the accuracy of information obtained in connection with applications for FSA direct loan assistance. It is used to verify debt information provided by applicants in order to determine their suitability for an Operating, Farm Ownership or Emergency loan. Additionally, it is used by FSA to verify debts and assets of borrowers requesting primary and preservation loan servicing or debt settlement.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Individual farmers, farm or other business entities and financial institutions.

Estimated Number of Respondents: 22,547

Estimated Number of Responses Per Respondent: 2

Estimated Total Annual Burden On Respondents: 11,274

Comments are invited on the following: (a) Whether the 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 burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (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. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Bashir Duale, Senior Loan Officer, USDA, Farm Service Agency, Loan Making Division, 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250–0522.

Comments will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC on December 17, 2001.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 01–31601 Filed 12–21–01; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Gifford Pinchot National Forest Resource Advisory Committee will meet on Thursday, January 17, 2002, at the Lewis County Law and Justice Center (old county annex building), 345 West Main Street, Chehalis, Washington. The meeting will begin at 10 a.m. and continue until 5 p.m. The purpose of the meeting is to:

(1) Provide committee members with the rules and regulations that govern it, and its role,

(2) Discuss the project approval process,

(3) Elect a committee chair, and

(4) Provide for a Public Open Forum.

All North Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (4) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Tom Knappenberger, Public Officer, at (360) 891–5005, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: December 18, 2001.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 01–31583 Filed 12–21–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Okanogan and Wenatchee National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Okanogan and Wenatchee National Forests Resource Advisory Committee will meet on Friday, January 11, 2002, at the Wenatchee National Forest headquarters main conference room, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 3 p.m. During this meeting committee members will discuss committee organization, adopt bylaws, choose a committee chairperson, and set the specific agenda for the January 31, 2002 meeting. All Okanogan and Wenatchee National Forests Resource Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: December 18, 2001.

Sonny J. O'Neal,

Forest Supervisor, Okanogan and Wenatchee National Forests.

[FR Doc. 01–31581 Filed 12–21–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Okanogan and Wenatchee National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Okanogan and Wenatchee National Forests Resource Advisory Committee will meet on Thursday, January 31, 2002, at the Wenatchee National Forest Service headquarters main conference room, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 3 p.m. Committee members will review projects proposed under Resource Advisory Committee consideration under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000. All Okanogan and Wenatchee National Forests Resource Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington, DC 98801, 509–662–4335.

Dated: December 18, 2001.

Sonny J. O'Neal,

Forest Supervisor, Okanogan and Wenatchee National Forests.

[FR Doc. 01–31582 Filed 12–21–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Gifford Pinchot National Forest Resource Advisory Committee will meet on Wednesday, January 16, 2002, at the Skamania County Public Works Department basement located in the Courthouse Annex, 170 NW. Vancouver Avenue, Stevenson, Washington. The meeting will begin at 10 a.m. and continue until 5 p.m. The purpose of the meeting is to:

(1) Provide committee members with the rules and regulations that govern it, and its role,

(2) Discuss the project approval process,

(3) Elect a committee chair, and

(4) Provide for a Public Open Forum.

All South Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (4) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Tom Knappenberger, Public Affairs Officer, at (360) 891–5005, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: December 18, 2001.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 01–31584 Filed 12–21–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Task Force on Agricultural Air Quality

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Task Force on Agricultural Air Quality will meet to continue discussions on critical air quality issues relating to agriculture. Special emphasis will be placed on understanding the relationship between agricultural production and air quality. The meeting is open to the public.

EFFECTIVE DATES: The meeting will convene Wednesday, January 16, 2002, at 9 a.m., and continue until 4 p.m. The meeting will resume Thursday, January 17, 2002 from 9 a.m. to 4 p.m. Written material and requests to make oral presentations should reach the Natural Resources Conservation Service, at the address below, on or beforeJanuary 7, 2002.

ADDRESSES: The meeting will be held at the Embassy Suite Hotel Phoenix-Scottsdale at the Stonecreek Golf Course, 4415 E. Paradise Village Parkway South, Phoenix, Arizona 85032; telephone: (602) 765–5800. Written material and requests to make oral presentations should be sent to Beth Sauerhaft, USDA–NRCS, PO Box 2890,Room 6158, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Questions or comments should be directed to Beth Sauerhaft, Designated Federal Official; telephone: (202) 720–8578; fax: (202) 720–2646; email: *beth.sauerhaft@usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the Task Force on Agricultural Air Quality, including any revised agendas for the January 16 and 17, 2002, meeting that occur after this **Federal Register** Notice is published, may be found on the World Wide Web at *http://www.nhq.nrcs. usda.gov/faca/aaqtf.html.*

Draft Agenda of the January 16 and 17 Meeting

A. Welcome to Phoenix, Arizona
1. Arizona State Official
B. Approve minutes of the Denver, Colorado, July 18–19, 2001, AAQTF meeting.
C. EPA Update
• National Academy of Sciences Scientific Assessment update
• Confined Animal Feeding Operation issues
• Status of residue burning issues
• Status of Agricultural Voluntary Compliance policy
D. Subcommittee Business
Research Priorities and Oversight Subcommittee
• Report on re-evaluation of research priorities
Emissions Factors Subcommittee
• Emission Factor Survey results
Concentrated Animal Feeding Operation Subcommittee
• Update on Action Plan
Voluntary/Incentive Based Program Subcommittee
Follow-up Subcommittee
Agricultural Burning Subcommittee
E. New Topics
• Farm Bill status
• Carbon credits trading
• Update on selected legal actions
F. Next Meeting, time/place
G. Public Input (time will be reserved before lunch and at the close of each daily session to receive public comment. Individual presentations will be limited to 5 minutes).

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may present oral presentations during the meeting. Persons wishing to make oral presentations should notify Beth Sauerhaft no later than January 7, 2002. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 25 copies to Beth Sauerhaft no later than January 7, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Beth Sauerhaft.

USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA'sTarget Center at (202) 720–2000 (voice and TDD).

To file a complaint of discrimination to USDA, write to the Director, Office of Civil Rights, Room 326–W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250–9410, or call (202) 720–5964 (voice and TDD). The USDA is an equal opportunity provider and employer.

Signed at Washington, DC, on December 11, 2001.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service.

[FR Doc. 01–31381 Filed 12–21–01; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business—Corporative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the program for the Business and Industry Loan Program.

DATES: Comments on this notice must be received by February 25, 2002 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Rick Bonnet, Senior Commercial Loan Specialist, RBS, U.S. Department of Agriculture, Stop 3221, telephone (202) 720–1804 or email *rick.bonnet@usda.gov*. The Federal Information Relay Service on (800) 887–8339 is available for TDD users.

SUPPLEMENTARY INFORMATION:

Title: Business and Industry Loan Program.

OMB Number: 0570–0014.

Expiration Date of Approval: March 31, 2002.

Type of Request: Extension of a currently approved information collection and recordkeeping requirements.

Abstract: The B&I Program is authorized under Section 310B of the Consolidated Farm and Rural Development Act, as amended. The purpose of the Business and Industry (B&I) Guaranteed and Direct Loan Programs is to improve, develop, or finance businesses, industry and employment and improve the economic and environmental climate in rural communities, including pollution control abatement and control. This purpose is achieved through bolstering the existing private credit structure, either through the guaranteeing of quality loans made by lending institutions, or making direct loans, thereby providing lasting community benefits. B&I program authority is composed of direct loan authority and loan guarantee authority. The program is administered by the Agency through a State Director serving the State.

All reporting and recordkeeping burden estimates for making and servicing B&I Guaranteed Loans have been moved to the new B&I Guaranteed Loan Program regulations which are at 7 CFR 4279–A and B and 4287–B. The only burden associated with 7 CFR 1980–E is a small portion of B&I Direct loanmaking. 7 CFR 1951–E is used for servicing B&I Direct and Community Facility Loans.

Estimate of Burden: Public reporting for this collection of information is estimated to average 8 hours per response.

Respondents: Individuals, rural businesses, for profit businesses, non-profit businesses, Indian tribes, public bodies, cooperatives.

Estimated Number of Respondents: 200.

Estimated Number of Responses per Respondent: 3.

Estimated Number of Responses: 586.

Estimated Total Annual Burden on Respondents: 4,545 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS 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 Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. 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: December 14, 2001.

John Rosso,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 01–31618 Filed 12–21–01; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–873 and A–791–815]

Notice of Initiation of Antidumping Duty Investigations: Ferrovanadium From the People's Republic of China and the Republic of South Africa

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

ACTION: Initiation of Antidumping Duty Investigations.

EFFECTIVE DATE: December 26, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Chris Brady at (202) 482–5253 and (202) 482–4406, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are references to the provisions codified at 19 CFR Part 351 (2000).

The Petition

On November 26, 2001, the Department received a petition filed in proper form by the Ferroalloys Association Vanadium Committee and its members: Bear Metallurgical Company, Shieldalloy Metallurgical Corporation, Gulf Chemical & Metallurgical Corporation, U.S. Vanadium Corporation, and CS Metals of Louisiana LLC (collectively, the petitioners). The Department received information supplementing the petition on December 7, 2001.

In accordance with section 732(b) of the Act, the petitioners allege that imports of ferrovanadium from the People's Republic of China (PRC) and the Republic of South Africa (South Africa) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and 771(9)(D) of the Act and have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate (*see the Determination of Industry Support for the Petition* section below).

Scope of Investigations

The scope of these investigations covers all ferrovanadium produced in the PRC and South Africa, regardless of grade, chemistry, form, shape or size. Ferrovanadium is an alloy of iron and vanadium that is used chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as ferrovanadium. The scope of this investigation specifically excludes vanadium additives other than ferrovanadium, such as nitrided vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials such as slag, boiler residues and fly ash. Merchandise under the following Harmonized Tariff Schedule of the United States (HTSUS) headings are specifically excluded:

- 2850.00.2000 Hydrides, nitrides, azides, silicides and borides, whether or not chemically defined, other than compounds which are also carbides of heading 2849: * * * Of vanadium.
- 8112.40.3000 Beryllium, * * * vanadium * * *, and articles of these metals, including waste and scrap: * * * Vanadium: Waste and scrap
- 8112.40.6000 Beryllium, * * * vanadium * * *, and articles of these metals, including waste and scrap: * * * Vanadium: Other

Ferrovanadium is classified under HTSUS heading 7202.92.00. Although the HTSUS subheading is provided for convenience and Customs purposes, the Department's written description of the scope of this investigation remains dispositive.

During our review of the petitions, we discussed the scope with the petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by January 7, 2002. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The United States International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to their separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

[1] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High*

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this petition, petitioners do not offer a definition of domestic like product distinct from the scope of these investigations. Thus, based on our analysis of the information presented to the Department by petitioners, and the information obtained and received independently by the Department, we have determined that there is a single domestic like product, which is defined in the *Scope of Investigations* section above, and have analyzed industry support in terms of this domestic like product.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Information contained in the petition demonstrates that the domestic producers or workers who support the petition account for over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. *See* the *Import Administration AD Investigation Checklist*, dated December 17, 2001 (*Initiation Checklist*) (public version on file in the Central Records Unit of the Department of Commerce, Room B–099). Furthermore, because the Department received no opposition to the petitions, the domestic producers or workers who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petitions. *See Initiation Checklist.*

Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).

Thus, the requirements of section 732(c)(4)(A)(i)(ii) are met.

Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See Initiation Checklist.*

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department has based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to home market price, U.S. price, constructed value (CV) and factors of production (FOP) are detailed in the *Initiation Checklist.*

The anticipated period of investigation (POI) for the PRC, a non-market economy (NME) country is April 1, 2001 through September 30, 2001, while the anticipated POI for South Africa, a market economy country, is October 1, 2000 through September 30, 2001. The petitioners requested that the Department, pursuant to section 351.204(b)(1) of the Department's regulations, extend the POI for South Africa to include October 2001, thus creating a thirteen-month POI. According to the petitioners, the Department should grant this extension because of "particularly aggressive pricing" by South African producers during October 2001.

We have denied the petitioners request for a thirteen-month POI. Although the petitioners are correct that section 351.204(b)(1) does provide the Department the authority to examine any period it considers appropriate, in practice we have departed from the normal POI in relatively few instances either before or after the passage of the URAA.[2] The Department's regulations provide for a twelve-month POI in market economy cases, and without sufficient demonstration that the Department's analysis would be improved by expanding the POI, we analyze sales made during this period. For purposes of this initiation, we find that the petitioners have not sufficiently demonstrated that use of the extended POI would improve the Department's analysis. Indeed, upon examination of the three U.S. price quotes from October 2001, we note that one of the quotes is actually higher than the price quote from within the POI. Furthermore, although the other two prices are below the price quote from within the POI, we do not find this level of pricing by South African producers to be significantly more aggressive than the level of pricing experienced during the POI. Because there is no evidence in the petition to demonstrate that expanding the POI would otherwise improve our analysis, thereby warranting an extension of the POI, we will utilize the normal POI of October 1, 2000, through September 30, 2001, for this investigation.

Regarding an investigation involving a NME, the Department presumes, based on the extent of central government control in a NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC*, 59 FR 22585 (May 2, 1994). In the course of the investigation of ferrovanadium from the PRC, all parties will have the opportunity to provide relevant information related to the issue of the PRC's status and the granting of separate rates to individual exporters.

People's Republic of China

Export Price

The petitioners identified the following three companies as producers and/or exporters of ferrovanadium from the PRC: Chengde Xinghua Vanadium Chemical Company Ltd., Jinzhou Ferroalloy (Group) Company Ltd., and Panzhihua Iron & Steel Group. To calculate export price (EP), petitioners provided (1) Price quotes from U.S. importers and/or distributors to unaffiliated U.S. customers for sales of Chinese ferrovanadium, and (2) the average unit value (AUV) calculated from import statistics released by the

[2] In *EMD from Ireland*, the Department explained the circumstances in which it would alter the normal POI. Specifically, the Department explained that expansion of the POI may be warranted in cases where the normal POI does not reflect the sales practices of the firms subject to investigation, including the following situations: (1) Where sales were made pursuant to long-term contracts; (2) where distortions would have occurred as a result of "seasonally-affected sales;" (3) where there are special order or customized sales; and (4) where sales activity was unusually depressed resulting in too few sales for an adequate investigation. *See Electrolytic Mongonese Dioxide From Irelnnd: Final Determination of No Sales ot Less Than Fair Value*, 54 FR 8776 (Mar. 2, 1989). Additionally, in *Pure Mognesiunl from the Russian Federotion*, certain respondents requested thal lhe Department extend the POI lo cover shipments of pure magnesium made pursuant lo long-lerm contracts signed prior to the POI. However, based on lhe arguments and evidence presented on this issue, lhe Department believed il was not appropriate lo extend the POI in lhis investigation and continued lo use lhe six-month period defined by 19 CFR 351.204(b)(1) for proceedings involving non-market economies. *See Notice of Preliminnry Determinnlion of Sales at Not Less Than Fair Volue: Pure Mognesium From the Russian Federation*, 66 FR 21319, 21321 (Apr. 30, 2001), followed in *Notice of Finol Determinotion of Soles ot Not Less Than Fair Vnlue: Pure Magnesium From the Russion Federation*, 66 FR 49347, 49348 (Sept. 27, 2001).

Census Bureau. Petitioners calculated the AUV using the quantity and value of imports during the POI of ferrovanadium from the PRC, entered under HTSUS 7202.92.00.

The price quotes provided by the petitioners are from a time period prior to the POI for the PRC. Because it is the Department's preference to use U.S. price data originating during the POI, we did not consider these price quotes as a basis for EP.

Based on information contained in the petition, the Department believes that HTSUS 7202.92.00 is the category under which all imports of ferrovanadium likely enter and the possibility of a misclassification by the U.S. Customs Service is minimal because non-subject merchandise is entered the United States under different HTSUS subheadings. *See* supplement to the petition (supplemental petition), dated December 7, 2001, at 3–6. Moreover, the Department believes that the AUV provides a better basis for initiation because the AUV is an average price covering the entire POI, while the reported price quotes are from a period of time before the POI for the PRC. As a result, we relied on the AUV to calculate EP. The petitioners used the "customs value" of the merchandise and the contained weight of vanadium in its AUV calculation. According to the definition provided by the ITC's Trade Data Web, the "customs value" does not include international freight or marine insurance.

The petitioners calculated a net U.S. price by deducting from the AUV foreign inland freight and foreign brokerage and handling. *See Initiation Checklist.*

Normal Value

The petitioners assert that the PRC is an NME country and no determination to the contrary has yet been made by the Department. In previous investigations, the Department has determined that the PRC is an NME. *See Steel Concrete Reinforcing Bars from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value (Re-Bars from China)*, 66 FR 33522 (June 22, 2001), and *Notice of Final Determination of Sales at Less Than Fair Value: Foundry Coke Products from the People's Republic of China (Foundry Coke from China)*, 66 FR 39487 (July 31, 2001). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Pursuant to section 771(18)(C)(i) of the Act, because the PRC's status as an NME remains in effect, the petitioners determined the dumping margin using an FOP analysis.

For normal value (NV), the petitioners based the FOP, as defined by section 773(c)(3) of the Act, on the consumption rates of one U.S. ferrovanadium producer, adjusted for known differences in production efficiencies on the basis of available information. The petitioners assert that information regarding the Chinese producers' consumption rates is not available, and have therefore assumed, for purposes of the petition, that producers in the PRC use the same inputs in the same quantities as the petitioners use, except where a variance from the petitioners' cost model can be justified on the basis of available information. Based on the information provided by the petitioners, we believe that the petitioners' FOP methodology represents information reasonably available to the petitioners and is appropriate for purposes of initiating this investigation.

Pursuant to section 773(c) of the Act, the petitioners assert that South Africa is the most appropriate surrogate country for the PRC, claiming that South Africa is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to the PRC in terms of per capita gross national product (GNP). The Department's regulations state that it will place primary emphasis on per capita GNP in determining whether a given market economy is at a level of economic development comparable to the NME country. In recent antidumping cases involving the PRC, the Department identified a group of countries at a level of economic development comparable to the PRC based primarily on per capita GNP. This group includes India, Pakistan, Indonesia, Sri Lanka, the Philippines, and Egypt. None of these countries are significant producers of ferrovanadium. The petitioners assert that there is no other product that can be considered "comparable" with ferrovanaduim. *See* supplemental petition, at 6–10. Based on information reasonably available to the Department, we have accepted this claim for purposes of initiation. Since the recent surrogate countries for the PRC do not produce ferrovanadium or products comparable to ferrovanadium, another surrogate country must be chosen.

Where the countries normally considered at a level of economic development similar to that of the country in question do not produce comparable merchandise, the Department's practice is to find the most comparable surrogate country that is a significant producer of comparable merchandise. The petitioners submit that South Africa is the most appropriate surrogate market economy for purposes of this investigation because it is a significant producer of ferrovanadium and, among the countries that produce ferrovanadium, it is at a level of economic development closest to the PRC.

Based on the information provided by the petitioners, we believe that the petitioners' use of South Africa as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, petitioners valued FOP, where possible, on reasonably available, public surrogate data from South Africa. Materials were valued based on South African import values, as published by *World Trade Atlas.* With respect to vanadium pentoxide, however, the petitioners asserted that South African import data are problematic because these data are dominated by imports into South Africa from Australia. The petitioners provided evidence indicating that one of the South African producers, Xstrata, imports large quantities of vanadium pentoxide from a related party in Australia. The petitioners argue that the per-unit price derived from South African import data is unreliable because these data include transfer prices between Xstrata and its affiliate. To support this claim, the petitioners calculated the per-unit price for vanadium pentoxide based upon South African import data and Australian export data, and found that the unit price from South African import data is approximately 40 percent lower than the unit price from Australian export data.

Although this price difference could result from several factors, such as differences in the value basis of the data reported by the governments of South Africa and Australia or the time lag between export from Australia and entry into South Africa, we find that, for purposes of initiation, the existence of transfer prices accounting for a large portion of the data from which the per-unit price is calculated is a valid reason to exclude Australian imports from the surrogate value.

To avoid this possible distortion, the petitioners recommend that the Department exclude imports of vanadium pentoxide from Australia when calculating the surrogate value for this input. We agree with this recommendation. However, because only a very small quantity of vanadium

pentoxide entered from non-Australian countries during the months of the anticipated POI of the PRC case, the unit value resulting from these data, for this time period, is aberrational. In contrast, during the longer POI for the South Africa case, there are enough imports from countries other than Australia to calculate a non-aberrational per-unit value. Therefore, we used the per-unit price derived from South African import statistics, excluding imports from Australia and covering the period October 2000 through September 2001, as the surrogate value to be used for this input.

Labor was valued using the Department's regression-based wage rate for the PRC, in accordance with 19 CFR 351.408(c)(3). Electricity was valued using South African electricity prices for industrial consumers published by the U.S. Department of Energy. For overhead, selling, general and administrative (SG&A) expenses and profit, the petitioners applied rates derived from the public fiscal year 2000 financial statements of a South African ferrovanadium producer that petitioners believe to be representative of ferrovanadium producers in South Africa. All surrogate values which fell outside the POI were adjusted for inflation through the use of an inflation adjustment factor that was calculated using South African price data, as published by the International Monetary Fund's *International Financial Statistics*. Based on the information provided by the petitioners, we believe that the surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiating this investigation.

Based upon the comparison of EP to NV, the petitioners calculated an estimated dumping margin of 91.64 percent.

South Africa

Export Price

The petitioners identified the following three companies as producers and/or exporters of ferrovanadium from South Africa: Highveld Steel & Vanadium Corporation Ltd., Vametco Minerals Corporation, and Xstrata SA (Pty) Ltd. To calculate EP, the petitioners provided (1) four price quotes from U.S. importers and/or distributors to unaffiliated U.S. customers for sales of South African ferrovanadium, and (2) the AUV calculated from import statistics released by the Census Bureau. Petitioners calculated the AUV using the quantity and value of imports during the POI of ferrovanadium from the South Africa, entered under HTSUS 7202.92.00.

In the petitioners' discussion concerning the AUV it calculated for imports of South African ferrovanadium, the petitioners noted that a large portion of imports from South Africa are shipments made by Xstrata to its related U.S. importer. Consequently, the petitioners state that the prices serving as the foundation of the AUV do not accurately reflect arm's length prices to unaffiliated purchasers. The petitioners supported this assertion by calculating the AUV of imports into the United States from South Africa and comparing the result to the AUV calculated from South African export data for exports of subject merchandise to the United States. The petitioners found that the AUV calculated from U.S. import data is approximately one-third higher than the AUV calculated from South African export data. According to the petitioners, this large price differential indicates the existence of transfer price manipulation by Xstrata and its related U.S. importer.

Although this price differential could result from several factors, such as differences in the value basis of the data reported by the Census Bureau and the South African government or the time lag between export from South Africa and entry into the United States, we find that the existence of transfer prices accounting for a large portion of the data from which the AUV is calculated is a valid reason to reject the AUV as the basis of EP.

The petitioners also provided four price quotes for sales of South African ferrovanadium from U.S. importers and/or distributors to unaffiliated customers in the United States. We note that one of the price quotes is from within the POI, while the three other price quotes are from after the POI for South Africa. Because it is the Department's preference to use U.S. price data originating during the POI, we did not consider the price quotes from outside the POI. For purposes of initiation, we relied upon the price quote from within the POI. This price quote was for a sale of South African ferrovanadium, from a U.S. distributor to an unaffiliated U.S. customer, on a packed and delivered basis.

The petitioners calculated a net U.S. price by deducting from the starting price foreign inland freight, foreign brokerage and handling, ocean freight, U.S. customs duty and fees, unloading and handling fees, repackaging costs, U.S. inland freight, and a U.S. distributor mark-up. *See Initiation Checklist.*

Normal Value

The petitioners were unable to obtain specific sales or offers for sale of ferrovanadium in South Africa. However, the petitioners provided an affidavit from a source familiar with the ferrovanadium market in South Africa that states that South African producers typically set their home market sales prices no higher than the published London Metal Bulletin (LMB) low price for ferrovanadium. Because the home market price charged by these companies is no higher than this benchmark, the petitioners claim that the LMB low price is a conservative number as a reasonable approximation of home market prices.

Although the petitioners provided information that the LMB prices are a reasonable approximation of home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of ferrovanadium in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacture (COM), SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce ferrovanadium in the United States and South Africa using publicly available data. To determine depreciation and SG&A expenses, the petitioners used the public unconsolidated fiscal year 2000 financial statements of a South African ferrovanadium producer that the petitioners believe to be representative of ferrovanadium producers in South Africa. To determine interest expenses, the petitioners relied upon amounts reported in the public consolidated fiscal year 2000 financial statements of the same South African ferrovanadium producer. Based upon the comparison of the published LMB low prices to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See Initiation of Cost Investigation* section below. *See Initiation Checklist.*

Based on the cost data discussed above, petitioners found that the published LMB low prices were below

COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in South Africa on constructed value (CV). The petitioners calculated CV using the same COM, SG&A, interest, and packing expenses used to compute South African home market COP. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. The petitioners relied upon amounts reported in the same South African ferrovanadium producer's public unconsolidated fiscal year 2000 financial statements to determine the amount for profit.

Based upon the comparison of EP to CV, the petitioners calculated an estimated dumping margin of 116 percent.

Initiation of Cost Investigation

As noted above, pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home market of South Africa were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with the requested antidumping investigations for this country. The Statement of Administrative Action (SAA), submitted to the U.S. Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H. Doc. 103–316, Vol. 1, 103d Cong., 2d Session, at 833(1994). The SAA, at 833, states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.* Based upon the comparison of the LMB low prices for ferrovanadium to the COP for South African producers, we find the existence of "reasonable grounds to believe or suspect" that sales of foreign like product in South Africa were made at prices below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of ferrovanadium from the PRC and South Africa are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. Individually, the volume of imports from the PRC and South Africa, using the latest available data, exceeded the statutory threshold of seven percent for a negligibility exclusion. Therefore, when cumulated, the volumes for these two countries also exceed the threshold. *See* section 771(24)(A)(ii) of the Act. Petitioners contend that the industry's injured condition is evidenced in the declining trends in operating profits, decreased U.S. market share, and price suppression and depression. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, domestic consumption, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. See Initiation Checklist.

Initiation of Antidumping Investigations

Based on our examination of the petition on ferrovanadium, and the petitioners' response to our supplemental questionnaire clarifying the petition, we find that the petition meets the requirements of section 732 of the Act. See Initiation Checklist. Therefore, we are initiating antidumping duty investigations to determine whether imports of ferrovanadium from the PRC and South Africa are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the governments of the PRC and South Africa. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, no later than January 10, 2002 whether there is a reasonable indication that imports of ferrovanadium from the PRC and South Africa are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 17, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–31643 Filed 12–21–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Notice of Extension of Time Limit for Final Results of Administrative Antidumping Review: Oil Country Tubular Goods, Other Than Drill Pipe, From Korea

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

EFFECTIVE DATE: December 26, 2001.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay or Thomas Gilgunn, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0780 and (202) 482–4236, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

On August 11, 1995, the Department published in the **Federal Register** an antidumping duty order on oil country tubular goods, other than drill pipe, (OCTG) from Korea (60 FR 41057). On August 31, 2000, the Department received a timely request from SeAH to conduct an administrative review pursuant to section 351.213(b)(2) of the Department's regulations. We published a notice of initiation of this antidumping duty administrative review on OCTG on October 2, 2000 (65 FR 58733).

The Department subsequently determined it was not practicable to complete the review within the standard time frame, and extended the deadline for completion of the preliminary results for this antidumping duty administrative review. *See Oil Country Tubular Goods from Korea: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review*, 66 FR 23232 (May 8, 2001). On September 10, 2001, the Department published the preliminary results of this administrative review. *See Oil Country Tubular Goods From Korea: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 46999 (September 10, 2001).

Extension of Time Limits for Final Results

Due to the need to analyze comments on inland freight expenses and indirect selling expenses, it is not practicable to complete the review within the initial time limits mandated by section 751(a)(3)(A) of the Act. Therefore, we are extending the due date for the final results of this review until March 9, 2002.

Dated: December 13, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 01–31642 Filed 12–21–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–828]

Stainless Steel Wire Rod From Taiwan: Notice of Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of rescission of antidumping duty administrative review for the period September 1, 2000 through August 31, 2001.

SUMMARY: On October 26, 2001, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on Stainless Steel Wire Rod (SSWR) from Taiwan for one manufacturer/exporter of subject merchandise, Walsin Lihwa Corporation (Walsin), for the period September 1, 2000 through August 31, 2001. The Department is rescinding this review after receiving a timely withdrawal from the party requesting this review.

EFFECTIVE DATE: December 26, 2001.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur or Karine Gziryan, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5346 or (202) 482–4081, respectively; fax (202) 482–5105.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions in effect as of 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 as codified at 19 CFR part 351 (2001).

Background

On September 25, 2001, the Department received a timely request from Walsin that we conduct an administrative review of its sales for the period September 1, 2000 through August 31, 2001. On October 23, 2001, the Department initiated an administrative review of the antidumping duty order on SSWR from Taiwan for the period of review (POR), September 1, 2000 through August 31, 2001, in order to determine whether merchandise imported into the United States is being sold at dumped prices. On October 26, 2001, the Department published in the **Federal Register** a notice of initiation of this administrative review on SSWR from Taiwan for the POR. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 66 FR 54195 (October 26, 2001). On November 21, 2001, Walsin withdrew its request for a review.

Rescission of 2000–2001 Antidumping Duty Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Because Walsin submitted its request for rescission within the 90-day time limit and there were no other requests for review from an interested party, we are rescinding this review. As such, we will issue appropriate assessment instructions directly to the U. S. Customs Service.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with section 751 of the Act and section 19 CFR 351.213(d)(4) of the Department's regulations.

Dated: December 17, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 01–31641 Filed 12–21–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121801E]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings of the Standing and Special Mackerel Scientific and Statistical Committee (SSC) and the Mackerel Advisory Panel (AP) on January 9 and January 10, 2002.

DATES: The Council's Standing and Special Mackerel SSC meeting will be convened at 8:30 a.m. EST on Wednesday, January 9, 2002 will conclude by 3 p.m. The Mackerel AP will be convened at 8:30 a.m. EST on Thursday, January 10, 2002 and will conclude by 3 p.m.

ADDRESSES: The meetings will be held at the Hilton Tampa Airport Hotel, 2225 Lois Avenue, Tampa, FL 33607; telephone: 813-877-6688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, the Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Mackerel AP and SSC will review the 2001 stock assessment analyses for Gulf group king and Spanish mackerel, as well as an assessment of cobia stocks in the Gulf of Mexico. They will also review the Mackerel Stock Assessment Panel (MSAP) reports for mackerels and cobia, and the report of the Socioeconomic Panel (SEP) that includes economic and social information. Based on this review, the Mackerel AP and SSC may recommend to the Council status criteria including maximum sustainable yield (MSY), optimum yield (OY), as well as overfishing and overfished criteria. The Mackerel AP and SSC may also make recommendations for total allowable catch (TAC), bag limits, size limits, commercial quotas, and other measures under the framework procedure of the Coastal Migratory Pelagics Fishery Management Plan.

Although other non-emergency issues not on the agenda may come before the AP/SSC 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. Actions of the AP/SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is 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 January 2, 2002.

Dated: December 19, 2001.

Richard W. Surdi.

Acting Director, Office of Sustainable Fisheries, national Marine Fisheries Service.

[FR Doc. 01–31660 Filed 12–21–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121801D]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Deep Water Crab Advisory Panel (AP).

DATES: This meeting will begin at 9 a.m. on Thursday, January 9, 2002 and will conclude by 5 p.m.

ADDRESSES: The meeting will be held at NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Peter Hood, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Council will convene its Deep-water Crab AP to review a preliminary issues and options paper for the development of a Deep-water Crab Fishery Management Plan (FMP).

The species that would be managed under the Deep-water Crab FMP will be the golden crab (*Chaceon fenneri*) and red crab (*Chaceon quinquedens*). The preliminary issues and options paper for the development of a Deep-water Crab FMP examines fisheries issues including management needs, gear requirements and restrictions, crab size and sex limitations for harvest, and requirements for fishery participants. Based on its review, the Deep-water Crab AP may recommend to the Council management criteria that will benefit the fishery while preserving the resource under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act. The Council will consider these recommendations at its January meeting to be held in Brownsville, TX, from January 21-24, 2002.

Although other non-emergency issues not on the agendas may come before the AP 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. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is 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 January 2, 2002.

Dated: December 19, 2001.

Richard W. Surdi.

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–31661 Filed 12–21–01; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Request of the Merchants Exchange (ME) for Approval of Six Cash-Settled Energy Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of commodity futures contracts.

SUMMARY: The Merchants Exchange (ME or Exchange) has requested that the Commission approve six new cash settled energy futures contracts pursuant to the provisions of Section 5c(c)(2)(A) of the Commodity Exchange Act as amended: Brent crude oil futures, European gas oil futures, light "sweet" crude oil futures, natural gas futures, no. 2 heating oil (New York Harbor

delivery) futures, and unleaded gasoline (New York Harbor delivery) futures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by the Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before January 10, 2002.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to *secretary@cftc.gov*. Reference should be made to the ME cash-settled energy futures contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: *jstorer@cftc.gov*

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission. Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the ME in support of the request for approval may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder 17 CFR part 145 (2000)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the ME should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC on December 18, 2001.

Richard A. Shilts,

Acting Director.

[FR Doc. 01–31547 Filed 12–21–01; 8:45 am]

BILLING CODE 8351–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 25, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren.Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 19, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Part B Complaint Procedures.
Frequency: On Occasion; Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 1,079.
Burden Hours: 10,790.
Abstract: States are required to implement complaint procedures to resolve complaints or allegations that a State (grantee) or a subgrantee that participates in the program funded under Part B of the Individuals with Disabilities Education Act is violating any requirement of Part B.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–31608 Filed 12–21–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 25, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 19, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Lists of Hearing Officers and Mediators.

Frequency: When modifications are deemed necessary.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 75,560.

Burden Hours: 15,292.

Abstract: Under Part B of the Individuals with Disabilities Education Act, each public educational agency receiving Part B funds must keep a list of persons who serve as hearing officers. The State keeps a list of mediators. These lists serve to provide interested parties with information about hearing officers and mediators qualifications.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–31609 Filed 12–21–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 25, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 19, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Local Educational Agency Application Under Part B of the Individuals with Disabilities Education Act.

Frequency: When modifications are deemed necessary.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 28,844.

Burden Hours: 28,844.

Abstract: Local educational agencies and eligible State agencies must have an application on file with the State educational agency in order to be eligible for funds under Part B of the Individuals with Disabilities Education Act. The Local educational agency application is required to receive a Part B subgrant.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov.* Individuals who use a

telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–31610 Filed 12–21–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 25, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: An Evaluation of the State Program Improvement Grant (SIG) Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 135. Burden Hours: 306.

Abstract: The purpose of this data collection is to obtain relevant and credible information from an evaluation of the State Improvement Grant Program in order to (1) make mid-course programmatic improvements to the Program, and (2) describe the implementation and progress of the Program to Federal officials, Congress, and other stakeholders. These data will also inform the reauthorization of the Individuals with Disabilities Education Act (IDEA). Respondents will include SIG Directors, SIG project evaluators, State educational agencies (SEA) policymakers, and SIG sub-grant directors in each of the 36 states with currently funded SIG projects.

Requests for copies of the proposed information collection request may be accessed from http://edicsweb.ed.gov, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO.RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Dated: December 19, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

[FR Doc. 01–31611 Filed 12–21–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NO. 84.031H]

Strengthening Institutions (SIP), American Indian Tribally Controlled Colleges and Universities (TCCU), Alaska Native and Native Hawaiian-Serving Institutions (ANNH) and Hispanic Serving Institutions (HSI) Programs; Notice Inviting Applications for Designation as Eligible Institutions for Fiscal Year (FY) 2002

Purpose of Programs: Under the SIP, TCCU, and ANNH Programs authorized under Part A of Title III of the Higher Education Act of 1965, as amended (HEA), institutions of higher education are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. Similarly, HSIs are eligible to apply for grants under the HSI Program, authorized under Title V of the HEA, if they meet specific statutory and regulatory requirements.

In addition, an institution that is designated as an eligible institution under those programs may also receive a waiver of certain non-Federal share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG), the Federal Work Study (FWS), the Student Support Services (SSS) and the Undergraduate International Studies and Foreign Language (UISFL) Programs. These first three programs are authorized under Title IV of the HEA; the fourth program is authorized under Title VI of the HEA. Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Title III Part A or Title V programs.

Special Note: To become eligible, your institution must satisfy a criterion related to needy student enrollment and one related to Educational and General (E&G) expenditures for a particular base year.

Because we changed the collection processes for determining the thresholds for these criteria, we do not have base year data beyond 1998–99. In order to award FY 2002 grants in a timely manner, we will use threshold data from base year 1998–99 rather than a later base year. In completing your eligibility application, therefore, you are to use data from the base year 1998–99.

Eligible Applicants: To qualify as an eligible institution under any of the programs included in this notice, an accredited institution must, among other requirements, have a high enrollment of needy students, and its E&G expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions

that offer similar instruction. The complete eligibility requirements for the HSI Program are found in 34 CFR 606.2–606.5. The complete eligibility requirements for the remaining programs are found in 34 CFR 607.2–607.5. The regulations may also be accessed by visiting the following Department of Education web site on the World Wide Web: *http://www.ed.gov/legislation/FedRegister/finrule/1999-4/121599a.html*

Enrollment of Needy Students: Under 34 CFR 606.3(a) and 607.3(a), an institution is considered to have a high enrollment of needy students if—(1) at least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offered similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 1998–1999 must be *more than* the median for its category of comparable institutions provided in the table in this notice.

Educational and General Expenditures per Full-Time Equivalent Student: An institution should compare its 1998–1999 E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the table in this notice. If the institution's E&G expenditures for the 1998–1999 base year are *less than* the average for its category of comparable institutions, it meets this eligibility requirement.

An institution's E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Federal Pell Grant percentages and the relevant average E&G expenditures per FTE student for the base year, 1998–1999, for the four categories of comparable institutions:

Type of institution	Median Pell grant percentage	Average E&G FTE
2-year Public Institutions	19.1	$7,948
2-year Non-Profit Private Institutions	30.6	25,358
4-year Public Institutions	25.0	18,732
4-year Non-Profit Private Institutions	25.2	27,143

Waiver Information: Institutions of higher education that are unable to meet the needy student enrollment requirement or the E&G expenditure requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b) and 607.4(c) and (d). *Institutions requesting a waiver of the needy student or the E&G expenditures requirement must include the detailed information as described in the instructions for completing the application.*

The needy student requirement waiver authority, provided in 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3), refers to "low-income" students and families. The regulations define "low-income" as an amount that does not exceed 150 percent of the amount equal to the poverty level in the 1998–99 base year as established by the U.S. Bureau of the Census, 34 CFR 606.3(c) and 607.3(c). For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

1998 ANNUAL LOW-INCOME LEVELS

Size of family unit	Contiguous 48 States, the District of Columbia and Outlying	Alaska	Hawaii
1	$12,075	$15,105	$13,890
2	16,275	20,355	18,720
3	20,475	25,605	23,550
4	24,675	30,855	28,380
5	28,875	36,105	33,210
6	33,075	41,355	38,040
7	37,275	46,605	42,870
8	41,475	51,855	47,700

For family units with more than eight members, add the following amount for each additional family member: $4,200 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $5,250 for Alaska; and $4,830 for Hawaii.

The figures shown as low-income levels represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The Census levels were published by the U.S. Department of Health and Human Services in the **Federal Register** on February 24, 1998 (63 FR 9235–9238).

In reference to the waiver option specified in 606.3(b)(4) and 607.3(b)(4) of the regulations, information about "metropolitan statistical areas" may be obtained by requesting the Metropolitan Statistical Areas, 1999, order number PB99–501538, from the National Technical Information Service, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number 1–800–553–6847. There is a charge for this publication.

Applications Available: January 4, 2002.

Deadline for Transmittal of Eligibility Applications:

- March 29, 2002 for applicant institutions that wish to apply for fiscal year 2002 new grants under the Title III SIP, TCCU, and ANNH Programs or the Title V HSI Program.

• May 24, 2002 for applicant institutions that wish to apply only for cost-sharing waivers under the FSEOG, FWS, SSS or UISFL Programs.

• March 29, 2002 for applicant institutions that wish to apply for both a grant under the Title III SIP, TCCU, and ANNH Programs or the Title V HSI Program and a waiver of the cost-sharing requirements under the FSEOG, FWS, SSS or UISFL Programs.

Electronic Submission of Applications: For FY 2002, we are again offering applicant institutions the option of submitting their Designation of Eligibility application in hard copy or sending it electronically to our eligibility web site at: *http://webprod.cbmiweb.com/Title3and5/index.html*

To enter the web site, you must use your institution's unique 8-digit identifier, i.e., your Office of Postsecondary Education Identification Number (OPE ID number). If you receive a hard copy of the eligibility application and instructions from us in the mail, look for the OPE ID number on the address label. Otherwise, your business office or student financial aid office should have the OPE ID number. If your business office or student financial aid office does not have that OPE ID number, contact a Department of Education staff member using the e-mail address located at the end of the Web page or the contact persons' telephone numbers or e-mail addresses included in this notice.

You will find detailed instructions for completing the form electronically under the "eligibility 2002" link at either of the following web sites:

http://www.ed.gov/offices/OPE/HEP/idues/title3a.html

or

http://www.ed.gov/hsi.

We encourage applicants to complete their form electronically and to complete it as soon as possible. For institutions of higher education that are unable to meet the needy student enrollment requirement or the E&G expenditure requirement and wish to request a waiver of one or both of those requirements, you may complete your designation application form on-line, print the form, and attach your narrative waiver request(s) to the printed form and mail both to the address in the next paragraph.

Mail your Designation of Eligibility application request to: U.S. Department of Education, 1990 K Street, NW, Request for Eligibility Designation, Washington, DC 20202–8513.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99. (b) The regulations for the SIP, TCCU and ANNH Programs in 34 CFR part 607, and for the HSI Program in 34 CFR 606.

For Applications and Further Information Contact: Thomas M. Keyes, Margaret A. Wheeler or Ellen Sealey, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, Request for Eligibility Designation, Washington, DC 20202–8513. Mr. Keyes' telephone number is (202) 502–7577. Ms. Wheeler's telephone number is (202) 502–7583. Ms. Sealey's telephone number is (202) 502–7580. Mr. Keyes, Ms. Wheeler and Ms. Sealey may be reached by e-mail at: *thomas.keyes@ed.gov*, *margaret.wheeler@ed.gov*, *ellen.sealey@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting those persons. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 1057–1059d, 1101–1103g.

Dated: December 19, 2001.

Maureen A. McLaughlin,

Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education

[FR Doc. 01–31654 Filed 12–21–01; 8:45 am]

BILLING CODE 4001–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–49–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Application

December 18, 2001

Take notice that on December 12, 2001, Great Lakes Gas Transmission Limited Partnership (Great Lakes), 5250 Corporate Drive, Troy, Michigan 48098, filed in Docket No. CP02–49–000 , an application pursuant to section 7(b) of the Natural Gas Act (NGA) for authorization to abandon certain meter station facilities on Great Lakes' system, located in Clare County, Michigan, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" from the RIMS Menu and follow the instructions (call (202) 208–2222 for assistance).

Great Lakes proposes to abandon its Summerfield Meter Station facilities, located in Clare County, Michigan, by removal of all above-ground and below-ground appurtenances upstream of Great Lakes' preexisting Mainline Branch Valve 11–5. Great Lakes states that the facilities to be abandoned include minor valves and fittings, 300 linear feet of nominal 2-inch diameter pipeline, a separator, condensate tank, heater, fence, building, and miscellaneous related facilities. Great Lakes indicates that it intends to salvage a 2-inch positive displacement meter and gas sampling equipment; all other items removed will be disposed of as scrap and/or solid waste, as appropriate.

On April 2, 1986, in Docket No. CP86–12–000, 35 FERC ¶ 62,038 (1986), the Commission issued a certificate to Great Lakes authorizing the construction and operation of a tap and metering facilities in Summerfield Township, Clare County, Michigan. Great Lakes declares that construction and operation of the Summerfield Meter Station was necessary for Great Lakes to provide

certain interruptible transportation service to Michigan Consolidated Gas Company (MichCon). Great Lakes avers that the facilities were placed into service on September 26, 1986.

Great Lakes states that since that time, MichCon removed its interconnecting facilities at the Summerfield receipt point. Great Lakes declares that MichCon has not delivered gas at the Summerfield receipt point since April of 1988, and has indicated it does not oppose Great Lakes' abandonment of the facilities there. Great Lakes asserts that no other customer's service utilizes the subject facilities.

Great Lakes states that the estimated cost to abandon the subject facilities is $50,000.

Any questions regarding this application should be directed to M. Catharine Davis, Senior Attorney, Great Lakes Gas Transmission Company, 5250 Corporate Drive, Troy, Michigan 48098, at (248) 205–7593.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 8, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31598 Filed 12–21–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–73–000]

Llano Estacado Wind, LP; Notice of Filing

December 18, 2001.

Take notice that on December 12, 2001, Llano Estacado Wind, LP (Llano Estacado Wind) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to section 205 of the Federal Power Act, and part 35 of the Commission's regulations, a supplemental filing in response to the Commission's December 10, 2001 Letter Order in the above-captioned proceeding. The supplement clarifies the ownership structures of Llano Estacado Wind and certain other entities.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-filing" link.

Comment Date: December 26, 2001.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31591 Filed 12–21–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Project No. 5–067]

Federal Energy Regulatory Commission

PPL Montana, LLC; Confederated Salish and Kootenai Tribes of the Flathead Nation; Notice Denying Intervention and Rejecting Request for Rehearing

December 18, 2001.

By order issued October 18, 2001, the Director, Division of Hydropower Compliance and Administration, granted an extension of time to develop and implement plans under Articles 60 and 64 for the Kerr Hydroelectric Project No. 5, located on lands within the Flathead Indian Reservation and on other federal lands. 97 FERC ¶ 62,050.

On November 19, 2001, The National Organization to Save Flathead Lake (National Organization) filed a motion to intervene and a request for rehearing of the Director's order to the extent that it granted an extension of time for the filing of a drought management plan under Article 60. On November 19, 2001, Bayside Park and Marine Center, L.L.C. (Bayside) filed a motion to intervene, and Bayside and Pointer Scenic Cruises (Pointer) filed a request for rehearing of the Director's order to the extent that it granted an extension of time for the filing of a drought management plan under Article 60.[1]

In proceedings on compliance matters arising after issuance of a license, the Commission will entertain interventions and requests for rehearing only when the filing or order entails a material change in the plan of project development or in the terms of a license, or would adversely affect the rights of a property holder in a manner not contemplated by the license. The Commission will also entertain interventions and requests for rehearing in proceedings commenced pursuant to a license article if the entity seeking intervention is specifically given a consultation role in the license article in question.[2] However, the timing of a compliance filing is an administrative matter between the licensee and the Commission and does not give rise to an opportunity to request intervention and seek rehearing.[3]

Because the Director's order addressed the timing of a compliance filing, the requests for intervention filed by National Organization and Bayside are dismissed, and the requests for rehearing filed by National Organization, Bayside, and Pointer are rejected.[4]

This notice constitutes final agency action. Requests for rehearing by the Commission of this notice must be filed within 30 days of issuance of this notice, pursuant to 18 CFR 385.713.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31597 Filed 12–21–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11953–000]

Symbiotics, LLC.; Notice Granting Late Intervention

December 18, 2001.

On November 26, 2001, the Commission issued a notice of the preliminary permit application filed by the Symbiotics, LLC. for the Wickiup Dam Project No. 11953, located on the Deschutes River, in Deschutes County, Florida. The notice established August 13, 2001, as the deadline for filing motions to intervene in the proceeding.

On November 26, 2001, a motion to intervene was filed late by American Rivers and WaterWatch of Oregon. Granting the late motion to intervene will not unduly delay or disrupt the proceeding or prejudice other parties to it. Therefore, pursuant to Rule 214,[1] the late motion to intervene filed in this proceeding by American Rivers and WaterWatch of Oregon is granted, subject to the Commission's rules and regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31592 Filed 12–21–01; 8:45 am]

BILLING CODE 6717–01–P

[1] Although Bayside's motion to intervene states that the filing is on behalf of Bayside and Pointer, the motion seeks intervention only for Bayside and implies that Pointer may already be an intervenor due to earlier participation in matters dealing with the Kerr Project. However, any such previous intervention would not extend to the present post-licensing matter.

[2] See Pacific Gas & Electric Co., 40 FERC ¶ 61,035 (1987).

[3] Bangor Hydro-Electric Co., 87 FERC ¶ 61,035 (1999).

[4] Only entities that have filed motions to intervene become parties, and only parties may file a request for rehearing. See 18 C.F.R. 385.713(b) (2001). Therefore, Pointer's request for rehearing is rejected for the additional reason that Pointer did not seek intervention.

[1] 18 CFR 385.214 (2001).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–41–000, *et al.*]

Pittsfield Generating Company, L.P., *et al.*; Electric Rate and Corporate Regulation Filings

December 18, 2001.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Pittsfield Generating Company, L.P.

[Docket Nos. EL02–41–000 and QF88–21–009]

Take notice that on November 27, 2001, Pittsfield Generating Company, L.P. filed in the above-referenced docket a request for waiver of the efficiency standard.

A copy of the filing was served on all parties listed in this docket, all parties listed in Docket No. ER98–4400–000, the Massachusetts Department of Telecommunications and Energy, Commonwealth Electric Company, Cambridge Electric Light Company, and New England Power Company.

Comment Date: January 8, 2002.

2. Shady Hills Power Company, L.L.C.

[Docket No. EG02–45–000]

Take notice that on December 13, 2001, Shady Hills Power Company, L.L.C. (Shady Hills Power) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Shady Hills Power owns a 480 MW generating facility that is under construction in New Port Richey, Florida (the Facility). When completed, the Facility will be interconnected to the transmission system of Florida Power Corporation. The Facility is scheduled to begin commercial operation in March 2002.

Comment Date: January 8, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. LSP-Pike Energy, LLC

[Docket No. EG02–46–000]

On December 13, 2001, LSP-Pike Energy, LLC (Pike) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to section 32

of the Public Utility Holding Company Act of 1935 (PUHCA) and part 365 of the Commission's regulations.

As more fully explained in the application, Pike is a limited liability company that will be engaged either directly or indirectly and exclusively in the business of owning and operating an electric generation facility located in Mississippi.

Comment Date: January 8, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Blue Spruce Energy Center, LLC

[Docket No. EG02–47–000]

Take notice that on December 14, 2001, Blue Spruce Energy Center, LLC (Blue Spruce) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Blue Spruce, a Delaware limited liability company, proposes to own and operate a 336 MW electric generating facility and sell the output at wholesale to electric utilities, an affiliated power marketer and other purchasers. The facility is a natural gas-fired, simple cycle generating facility, which is under development in Adams County, Colorado.

Comment Date: January 8, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Duke Energy Marshall County, LLC

[Docket No. EG02–48–000]

Take notice that on December 12, 2001, Duke Energy Marshall County, LLC (Duke Marshall) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and part 365 of the Commission's regulations.

Duke Marshall is a Delaware limited liability company that will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities to be located in Marshall County, Kentucky. The eligible facilities will consist of an approximately 640 MW dual fuel fired simple cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment Date: January 8, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Progress Energy, Inc. on Behalf of Florida Power Corporation

[Docket No. ER02–534–000]

Take notice that on December 13, 2001, Florida Power Corporation (FPC) filed a Service Agreement with DTE Energy Trading, Inc. under FPC's Short-Form Market-Based Wholesale Power Sales Tariff (SM–1), FERC Electric Tariff No. 10. A copy of this filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

FPC is requesting an effective date of November 20, 2001 for this Agreement.

Comment Date: January 3, 2002.

7. Xcel Energy Services, Inc.

[Docket No. ER02–535–000]

Take notice that on December 13, 2001, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company and Northern States Power Company (Wisconsin) (collectively, NSP), submitted for filing a Form of Service Agreement with Lighthouse Energy Trading, Inc. (Lighthouse), which is in accordance with NSP's Rate Schedule for Market-Based Power Sales (NSP Companies FERC Electric Tariff, Original Volume No. 6).

XES requests that this agreement become effective on October 24, 2001.

Comment Date: January 3, 2002.

8. Progress Energy, Inc. on behalf of Florida Power Corporation

[Docket No. ER02–536–000]

Take notice that on December 13, 2001, Florida Power Corporation (FPC) filed a Service Agreement with The Detroit Edison Company under FPC's Short-Form Market-Based Wholesale Power Sales Tariff (SM–1), FERC Electric Tariff No. 10. A copy of this filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

FPC is requesting an effective date of November 20, 2001 for this Agreement.

Comment Date: January 3, 2002.

9. Shady Hills Power Company, LLC

[Docket No. ER02–537–000]

Take notice that on December 13, 2001, Shady Hills Power Company, LLC (Shady Hills Power) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for an order accepting its FERC Electric Tariff No. 1, granting certain blanket approvals, including the authority to sell electricity at market-base rates, and waiving certain regulations of the Commission. Shady Hills Power requested expedited Commission consideration. Shady Hills Power requested that its Rate Schedule No. 1 become effective upon the earlier of the date the Commission authorizes market-based rate authority, or 30-days from the date of this filing. Shady Hills Power also filed its FERC Electric Tariff No. 1.

Comment Date: January 3, 2002.

10. LSP-Pike Energy, LLC

[Docket No. ER02–538–000]

Take notice that on December 13, 2001, LSP-Pike Energy, LLC (Pike) filed with the Federal Energy Regulatory Commission (Commission), under section 205 of the Federal Power Act (FPA), an application requesting that the Commission (1) accept for filing its proposed market-based FERC Rate Schedule No. 1; (2) grant blanket authority to make market-based wholesale sales of capacity and energy under the FERC Rate Schedule No. 1; (3) grant authority to sell ancillary services at market-based rates; and (4) grant such waivers and blanket authorizations as the Commission has granted in the past to other nonfranchised entities with market-based rate authority.

Comment Date: January 3, 2002.

11. Mid-Continent Area Power Pool

[Docket No. ER02–539–000]

Take notice that on December 13, 2001, the Mid-Continent Area Power Pool, on behalf of its public utility members, filed executed short-term firm and non-firm service agreements under MAPP Schedule F with Exelon Generating Company, LLC.

Comment Date: January 3, 2002.

12. Michigan Electric Transmission Company

[Docket No. ER02–540–000]

Take notice that on December 13, 2001 Michigan Electric Transmission Company (METC) tendered for filing an unexecuted Generator Interconnection and Operating Agreement Between METC and Tallmadge Generation Company, LLC [Generator] (Agreement). Generator had requested that the unexecuted Agreement be filed. METC requested that the Agreement be allowed to become effective December 13, 2001.

Copies of the filing were served upon Generator and the Michigan Public Service Commission.

Comment Date: January 3, 2002.

13. Michigan Electric Transmission Company

[Docket No. ER02–541–000]

Take notice that on December 13, 2001, Michigan Electric Transmission Company (METC) tendered for filing an executed Service Agreement for

Network Integration Transmission Service and a Network Operating Agreement with Midwest Energy Cooperative (Midwest) and Wabash Valley Power Association, Inc. (Wabash) pursuant to METC's Open Access Transmission Service Tariff (METC FERC Electric Tariff No. 1). Copies of the filed agreements were served upon the Michigan Public Service Commission, Wabash and Midwest.

METC is requesting an effective date of January 1, 2002 for the Agreements.

Comment Date: January 3, 2002.

14. Tucson Electric Power Company

[Docket No. ER02–542–000]

Take notice that on December 17, 2001, Tucson Electric Power Company tendered for filing one (1) Umbrella Service Agreement (for short-term firm service) and one (1) Service Agreement (for non-firm service) pursuant to Part II of Tucson's Open Access Transmission Tariff, which was filed in Docket No. ER01–208–000.

The details of the service agreements are as follows: Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service dated as of September 26, 2001 by and between Tucson Electric Power Company El Paso Electric Company—FERC Electric Tariff Vol. No. 2, Service Agreement No. 176. No service has commenced at this time. Form of Service Agreement for Non-Firm Point-to Point Transmission Service dated as of September 26, 2001 by and between Tucson Electric Power Company El Paso Electric Company—FERC Electric Tariff Vol. No. 2, Service Agreement No. 177. No service has commenced at this time.

Comment Date: January 7, 2002.

15. Duke Energy Corporation

[Docket No. ER02–543–000]

Take notice that on December 11, 2001, Duke Electric Transmission (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with PSEG Energy Resources for Firm Transmission Service under Duke's Open Access Transmission Tariff. Duke requests that the proposed Service Agreement be permitted to become effective on November 27, 2001. Duke states that this filing is in accordance with part 35 of the Commission's regulations, 18 CFR 35, and that a copy has been served on the North Carolina Utilities Commission.

Comment Date: January 2, 2002.

16. American Transmission Company LLC

[Docket No. ER02–548–000]

Take notice that on December 14, 2001, American Transmission Company LLC (ATCLLC) tendered for filing Generation-Transmission Interconnection Agreements for the Port Washington Power Plant, Power the Future Units and the Oak Creek Power Plant, Power the Future Units between Wisconsin Electric Power Company and ATCLLC. ATCLLC requests and effective date of December 14, 2001.

Comment Date: January 4, 2002.

17. Entergy Services, Inc.

[Docket No. ER02–550–000]

Take notice that on December 14, 2001, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), submitted for filing the Second Revised Network Integration Transmission Service Agreement between Energy Services, as agent for the Entergy Operating Companies, and Louisiana Generating LLC.

Comment Date: January 4, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31590 Filed 12–21–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4718–011]

Cocheco Falls Associates; Notice of Availability of Environmental Assessment

December 18, 2001.

An environmental assessment (EA) is available for public review. The EA is for petitions to revise the license for the Cocheco Falls Project with respect to fish passage. The EA recommends reasonable modifications to project structures and operation to benefit fish passage and that such modifications would not constitute a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. Copies of the EA can be viewed in the Reference and Information Center, Room 2A, of the Commission's Offices at 888 First Street, NE., Washington, DC 20426. The EA may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link-select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Comments on the EA are invited. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers for substance should be supported by appropriate documentation. Comments should be filed within 30 days from the date of this notice with Linwood A. Watson, Jr., Acting Secretary. 888 First Street, NE., Washington, DC 20426, and should reference Project No. 4718.

For further information, please contact Mr. Robert H. Grieve at (202) 219–2655.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31596 Filed 12–21–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

December 18, 2001.

a. *Type of filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2165.

c. *Date filed:* November 19, 2001.

d. *Submitted by:* Alabama Power Company—current licensee.

e. *Name of project:* Warrior River Hydroelectric Project.

f. *Location:* On the Black Warrior River and on the Sipsey Fork of the Black Warrior River in Cullman, Walker, Winston, and Tuscaloosa Counties, Alabama. The project occupies federal lands administered by the U.S. Army Corps of Engineers, and located within the William B. Bankhead National Forest.

g. *Filed pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee contact:* Jim Crew, *JFCREW@southernco,com*, (205) 257–4265, or Barry Lovett, *BKLOVETT@southernco.com*, (205) 257–1268.

i. *FERC contact:* Ron McKitrick, ronald.mckitrick@ferc.fed.us, (770) 452–3778.

j. *Effective date of current license:* September 1, 1957.

k. *Expiration date of current license:* August 31, 2007.

l. *Description of the project:* The project consists of the following two developments:

The Smith Development consists of the following existing facilities: (1) The 300-foot-high, 2,200-foot-long Smith Dam; (2) a 956-foot-long concrete spillway section; (3) the 21,200-acre Smith Lake with a normal water surface elevation of 510 feet msl; (4) two 630-foot-long, 22-foot-diameter tunnels leading to; (5) a powerhouse containing two generating units with a total installed capacity of 157.5 MW, (6) a 700-foot-long tailrace; (7) two 115-kV transmission lines and one 161-kV transmission line; and (8) other appurtenances.

The Bankhead Development consists of the following existing facilities: (1) The 1,400-foot-long John Hollis Bankhead Dam consisting of: (a) a 1,230-foot-long concrete spillway section equipped with 22 vertical lift gates; (b) a 78-foot-wide intake section; (2) the 9,200-acre Bankhead Lake with a normal water surface elevation of 255feet msl; (3) a powerhouse containing one generating unit with an installed capacity of 52.5 MW; (4) a 115–kV transmission line; and (5) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 31, 2005.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31593 Filed 12–21–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

December 18, 2001.

a. *Type of filing:* Notice of Intent to File an Application for a New License.

b. *Project No.:* 618.

c. *Date filed:* November 19, 2001.

d. *Submitted by:* Alabama Power Company—current licensee.

e. *Name of project:* Jordan Hydroelectric Project.

f. *Location:* On the Coosa River in Chilton, Coosa, and Elmore Counties, Alabama. The project does not occupy federal lands.

g. *Filed pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee contact:* Jim Crew, *JFCREW@southernco,com*, (205) 257–4265, or Barry Lovett, *BKLOVETT@southernco.com*, (205) 257–1268.

i. *FERC contact:* Ron McKitrick, ronald.mckitrick@ferc.fed.us, (770) 452–3778.

j. *Effective date of current license:* October 1, 1980.

k. *Expiration date of current license:* July 31, 2007.

l. *Description of the project:* The project consists of the following existing facilities: (1) The Jordan Dam consisting of: (a) A 75-foot-long concrete bulkhead; (b) a 246-foot-long concrete intake structure; (c) a 1,330-foot-long concrete spillway section equipped with eighteen 34-foot-wide by 8-foot-high radial gates and seventeen 30-foot-wide by 19-foot-high vertical lift gates; (d) a 177-foot-long concrete bulkhead; (2) the 5,880-acre Jordan Lake with a normal water surface elevation of 252 feet msl; (3) a powerhouse containing four generating units with a total installed capacity of 100 MW; (4) seven 115-kV transmission lines; and (5) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2005.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31594 Filed 12–21–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

December 18, 2001.

a. *Type of filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 82.

c. *Date filed:* November 19, 2001.

d. *Submitted by:* Alabama Power Company—current licensee.

e. *Name of project:* Mitchell Hydroelectric Project.

f. *Location:* On the Coosa River in Chilton and Coosa Counties, Alabama. The project does not occupy federal lands.

g. *Filed pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee contact:* Jim Crew, *JFCREW@southernco,com*, (205) 257–4265, or Barry Lovett, *BKLOVETT@southernco.com*, (205) 257–1268.

i. *FERC contact:* Ron McKitrick, ronald.mckitrick@ferc.fed.us, (770) 452–3778.

j. *Effective date of current license:* November 1, 1975.

k. *Expiration date of current license:* July 31, 2007.

l. *Description of the project:* The project consists of the following existing facilities: (1) The Mitchell Dam consisting of: (a) a 964-foot-long concrete spillway section equipped with twenty-three 30-foot-wide by 15-foot-high timber-faced radial gates and three 30-foot-wide by 25-foot-high steel gates; (b) a 449-foot-long west embankment; (2) the 5,850-acre Mitchell Lake with a normal water surface elevation of 312 feet msl; (3) the original powerhouse containing one generating unit with an installed capacity of 20 MW; (4) a new powerhouse containing three generating units with an installed capacity of 150 MW; (5) four 115-kV transmission lines; and (6) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at

least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2005.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31595 Filed 12–21–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Issuance of Staff Report on Ideas for Better Stakeholder Involvement

December 18, 2001.

The staff of the Office of Energy Projects has issued a revised version of its report entitled: "Ideas For Better Stakeholder Involvement In The Interstate Natural Gas Pipeline Planning Pre-Filing Process." The report has been revised based on feedback received at Sixth Interstate Natural Gas Facility-Planning Seminar held on October 26, 2001.

The report can be downloaded from the FERC Web site at *www.ferc.gov* or requested by E-mail at: *gas outreach-feedback@ferc.fed.us.*

As discussed at the October 26 meeting, the staff is in the process of planning a series of workshops to bring interstate natural gas companies and Federal, state and local agency representatives, and landowners together to discuss implementation of stakeholder involvement programs. The workshops will be organized in a way to provide opportunities to present and discuss case-studies of efforts taken by interstate pipeline companies which highlight the various challenges and successes of getting people involved in the pipeline planning process before the applications are filed. Future notices will announce the format, dates and locations of the workshops.

If you have any questions, please contact Richard Hoffmann at 202/208–0066 or Lauren O'Donnell at 202/208–0325.

J. Mark Robinson,

Director, Office of Energy Projects.

[FR Doc. 01–31599 Filed 12–21–01; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 01–2929]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On December 19, 2001, the Commission released a public notice announcing the January 15–16, 2002 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–2320 or *dblue@fcc.gov*. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 6A207, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: December 19, 2001.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, January 15, 2002, from 8:30 a.m. until 5 p.m., and on Wednesday, January 16, 2002, from 8:30 a.m., until 12 noon (if required). The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW–C305, Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Proposed Agenda

1. Announcements and Recent News
2. Approve Minutes
   —September 25, 2001 Conference Call Meeting
   November 27–28, 2001 Meeting
3. Report of North American Numbering Plan Administrator (NANPA)
4. Report of NANPA Oversight Working Group
   —Industry associations to report on efforts to encourage members to complete surveys
5. Report of National Thousands-Block Pooling Administrator
6. Report of NANP Expansion/ Optimization IMG
7. Status of Industry Numbering Committee activities
8. Report of the Local Number Portability Administration (LNPA) Working Group
   —Wireless Number Portability Operations (WNPO) Subcommittee
9. Report of NAPM LLC
10. Report from NBANC
11. Report of Cost Recovery Working Group
12. Report of E-Conferencing Subcommittee
13. Steering Committee
    —Table of NANC Projects
14. Report of Steering Committee
15. Action Items
16. Public Participation (5 minutes each)
17. Other Business

Adjourn (No later than 5 PM)

Wednesday, January 16, 2002 (if required)

18. Complete any unfinished Agenda Items
19. Other Business

Adjourn (No later than 12 Noon)

Federal Communications Commission.

Diane Griffin Harmon,

Acting Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 01–31580 Filed 12–21–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

State Funds for FY2002 Pre-Disaster Mitigation Program

AGENCY: Federal Insurance and Mitigation Administration, Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability of one-time grants for states.

SUMMARY: FEMA gives notice of the availability of a one-time $50,000 grant for each of the fifty States, as well as the District of Columbia, the U.S. Virgin Islands, and the Commonwealth of

Puerto Rico to prepare for and develop processes and procedures to implement the Pre-Disaster Mitigation (PDM) program, as authorized by § 102 of the Disaster Mitigation Act of 2000. No match is required for these one-time grants. The ultimate goal of this grant is to ensure that States have a process in place to implement the new PDM program when funds become available, and to ensure that implementation is coordinated with other mitigation programs and activities at the State level.

DATES: Grant applications should be submitted to the appropriate FEMA Regional Office by January 11, 2002.

ADDRESSES: FEMA Regional Offices:
Serving the State of Maine, State of New Hampshire, State of Vermont, State of Rhode Island, State of Connecticut, and the Commonwealth of Massachusetts:

FEMA Region I

442 J W. McCormack POCH, Boston, MA 02109–4595.

Serving the State of New York, State of New Jersey, the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands:

FEMA Region II

26 Federal Plaza, Rm. 1337, New York, NY 10278–0002.

Serving the District of Columbia, Delaware, Maryland, Pennsylvania, Commonwealth of Virginia, and West Virginia:

FEMA Region III

1 Independence Mall, 6th Floor, 615 Chestnut Street, Philadelphia, PA 19106–4404.

Serving the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee:

FEMA Region IV

3003 Chamblee Tucker Road, Atlanta, GA 30341.

Serving the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin:

FEMA Region V

536 S. Clark Street, 6th Floor, Chicago, IL 60605.

Serving the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas:

FEMA Region VI

FRC 800 North Loop 288, Denton, TX 76201–3698.

Serving Iowa, Kansas, Missouri, and Nebraska:

FEMA Region VII

2323 Grand Avenue, Suite 900, Kansas City, MO 64108.

Serving Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:

FEMA Region VIII

Denver Federal Center, Building 710, Box 25267, Denver, CO 80225–0267.

Serving the States of Arizona, California, Hawaii and Nevada; and the Territory of American Samoa, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau:

FEMA Region IX

Building 105, Presidio of San Francisco, San Francisco, CA 94129–1250.

Serving the States of Alaska, Idaho, Oregon and Washington:

FEMA Region X

Federal Regional Center, 130 228th Street, SW, Bothell, WA 98021–9796.

FOR FURTHER INFORMATION CONTACT: Margaret Lawless, Program Planning and Delivery Division, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Room 401, Washington, DC 20472, (202) 646–3027 or E-mail: *Margaret.Lawless@fema.gov.*

SUPPLEMENTARY INFORMATION:

Appropriations

Under Public Law 106–377, 114 Stat. 1441, Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriation Act, 2001, we are issuing a Request for Application (RFA) to implement the PDM Program.

Applicant Eligibility

Each of the fifty States is eligible, including the Virgin Islands, the Commonwealth of Puerto Rico, and Washington, DC.

Grant Application Process

To apply for this grant, States must complete and submit to the appropriate FEMA Regional Office the standard grant application forms in accordance with 44 Code of Federal Regulations Part 13.10, which can be obtained from the Regional Office. The grant application should include:

- Application for Federal Assistance, Standard Form 424;
- Budget Information " Non-Construction Program, FEMA Form 20–20;
- Summary Sheet for Assurances and Certification, FEMA Form 20–16;
- Assurances " Non-Construction Program, FEMA Form 20–16A;
- Certification Regarding Lobbying; Debarment, Suspension and Other Responsible Matters; and Drug-Free Workplace Requirements, FEMA Form 20–16C;
- Disclosure of Lobbying Activities, Standard Form LLL; and,
- Program Narrative describing staffing, activities, and timeframes to complete the activities.

Eligible Activities

- Developing a State-wide strategy for PDM program implementation, including a process for soliciting community applications, and criteria prioritizing applications that is consistent with the State mitigation plan;
- Providing technical assistance to sub-grantees in completing the application process;
- Conducting workshops for local officials on the development of local mitigation plans;
- Developing an Enhanced State Mitigation Plan based on the new DMA 2000 planning criteria; and,
- Obtaining contractor support to assist the States in the accomplishment of any of these eligible items.

Reporting Requirements

The States shall submit a final financial report and a final performance report to the appropriate FEMA Regional Office 90 days after the close of the grant.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–31635 Filed 12–21–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of November 6, 2001

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on November 6, 2001.[1]

[1] Copies of the Minutes of the Federal Open Market Committee meeting on November 6, 2001, which includes the domestic policy directive issued

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with reducing the federal funds rate to an average of around 2 percent.

By order of the Federal Open Market Committee, December 17, 2001.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 01–31606 Filed 12–21–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Ms. Vilma Valentin, Boston University School of Medicine: Based on the report of an investigation conducted by the Boston University (BU) School of Medicine (BU Report) as well as additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Ms. Vilma Valentin, a former counselor and interventionist on the BU Inner City Asthma Study at the BU School of Medicine, engaged in scientific misconduct by fabricating records in research funded by two National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH), cooperative agreements: U01 AI39776, "Data Coordinating Center for NCICAS II," and U01 AI39769, "Trial of Interventions to Reduce Asthma Morbidity."

Specifically, PHS found that Ms. Valentin fabricated: (1) The data on three environmental intervention forms for visits that she allegedly made to two patients' homes in early and late August 1999; these visits did not take place; and (2) the reports of two telephone calls that she allegedly made to the two patients' families during the same period; these calls were not made. The study intervention included home visits, telephone calls, and advocacy letters, all of which were central to the research, which sought to evaluate the effectiveness of two interventions to reduce asthma severity. Thus, the data and reports could have had a substantive effect on the outcome of the research had the institution not corrected the research record.

While acknowledging the findings of scientific misconduct as set forth above and in the BU Report but without admitting liability or wrongdoing, Ms. Valentin has entered into a Voluntary Exclusion Agreement in which she has voluntarily agreed for a period of three (3) years, beginning on December 5, 2001:

(1) To exclude herself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which Ms. Valentin's participation is proposed, that uses her in any capacity on PHS-supported research, or that submits a report of PHS-funded research in which she is involved, must concurrently submit a plan for supervision of her duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of Ms. Valentin's research contribution.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 01–31579 Filed 12–21–01; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The peer review groups listed below are subcommittees of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.

Date: January 24–25, 2002 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHRQ 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

2. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: February 21–22, 2002 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHRQ 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

3. *Name of Subcommittee:* Health Systems Research.

Date: February 28–March 1, 2002 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHRQ 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

4. *Name of Subcommittee:* Health Research Dissemination and Implementation.

Date: February 28–March 1, 2002 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHRQ 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

5. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Date: March 7–8, 2002 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHRQ 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: December 18, 2001.

John M. Eisenberg,

Director.

[FR Doc. 01–31617 Filed 12–21–01; 8:45 am]

BILLING CODE 4160–90–M

at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cooperative Arrangement Between the United States Departments of Health and Human Services and Agriculture and the Secretariats of Health and Agriculture, Livestock, Rural Development, Fish, and Food of the United Mexican States Regarding Cooperative Activities to Enhance the Safety of Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a cooperative arrangement between the Department of Health and Human Services and the Department of Agriculture of the United States of America and the Secretariat of Health and the Secretariat of Agriculture, Livestock, Rural Development, Fish, and Food of the United Mexican States. The purpose of this arrangement is to strengthen existing scientific and public health protection cooperative activities related to the regulation of the safety of food to achieve a reduction in the incidence of foodborne illnesses in both countries.

DATES: The arrangement became effective September 4, 2001.

FOR FURTHER INFORMATION CONTACT: Camille Brewer, International Activities Coordinator for Food, Center for Food Safety and Applied Nutrition (HFS–032), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–2314. (After December 14, 2001, the Center for Food Safety and Applied Nutrition's address will be 5100 Paint Branch Pkwy., College Park, MD 20740.)

SUPPLEMENTARY INFORMATION: This cooperative arrangement is being published in accordance with 21 CFR 20.108(c) which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**.

Dated: December 13, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

The arrangement is set forth in its entirety as follows:

BILLING CODE 4160–01–S

COOPERATIVE ARRANGEMENT

AMONG

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND

THE DEPARTMENT OF AGRICULTURE
OF THE UNITED STATES OF AMERICA

AND

THE SECRETARIAT OF HEALTH

AND

THE SECRETARIAT OF AGRICULTURE, LIVESTOCK,
RURAL DEVELOPMENT, FISH, AND FOOD
OF THE UNITED MEXICAN STATES

REGARDING COOPERATION TO ENHANCE ACTIVITIES OF MUTUAL INTEREST IN
THE AREA OF THE SAFETY OF FOODS
FOR HUMAN CONSUMPTION

The Department of Health and Human Services (DHHS) and the Department of Agriculture (USDA) of the United States of America and the Secretariat of Health (SSA) and the Secretariat of Agriculture, Livestock, Rural Development, Fish, and Food (SAGARPA) of the United Mexican States, hereinafter referred to as the "participants,"

RECOGNIZING

The special relationship between the participants and their mutual commitment to achieve a significant reduction in the incidence of food-borne illnesses in both countries as evidenced by the United Mexican States and the United States of America Joint Statement on Food Safety signed on June 10, 1998;

Food safety officials and competent authorities of the participants can better achieve this goal by sharing information and experience concerning the regulation of food products;
The trade links between the United States and Mexico under the North American Free Trade Agreement, the common border, and the high degree of trade in food products between our two countries;

In particular, that close bilateral cooperation with regard to those food products that are traded, or may be traded, between the two countries has the potential to significantly increase public health protection in both countries;

That effective food safety programs, both in the United States and in Mexico, require close cooperative efforts of public health and regulatory officials and agencies at the federal, state, and local levels; that such programs require the active participation by other non-government entities such as consumers, industry, and academia that are responsible for and concerned about food safety and reducing the incidence of food-borne health hazards; and that this Arrangement does not diminish any of the existing and ongoing cooperative efforts of these government and non-government agencies, groups, and individuals working to enhance and effect food safety; and

The importance of reducing potential hazards related to situations involving processed and unprocessed food products in both countries through enhanced regulatory and scientific collaboration and through the implementation of specific cooperative activities

Have reached the following understanding:

Article 1
Purpose

This Arrangement is intended to affirm the intention between the participants to strengthen existing scientific and public health protection cooperative activities related to the regulation of the safety of food, including products and feed for food-producing animals.

Article 2
Products

In order to achieve the goal of this Arrangement, the cooperative activities include the following products:

- foods and food products for human consumption, both processed and unprocessed
- feeds intended for use in food-producing animals
- foods derived from biotechnology;
- additives intended for use in such foods and feeds
- pesticide residues and other contaminants in food agricultural commodities
- animal drugs intended for use in food-producing animals

And, the following activities related to the above-mentioned products:

- antimicrobial resistance
- good agricultural practices
- good manufacturing practices
- good laboratory practices
- biotechnology
- nutrition
- labeling requirements
- incidents or outbreaks of disease, health hazard, contamination, injury, adverse event, or adverse finding that may arise in routine or emergency situations

Article 3
Activities

The participants, in accordance with their legal authority, intend to develop joint efforts to effectively and appropriately exchange information and enhance and develop programs and intend to coordinate as appropriate with other relevant food safety agencies, groups, and individuals within their countries. These information exchanges and programs may include the following activities:

A. Development of specific procedures for the exchange of regulatory and public health information, both for routine and emergency purposes. This information includes laws, regulations, proposed amendments, guidelines, procedures, and technical documents (such as evaluation of foreign suppliers of regulated products and enforcement decisions, including inspection reports, reports of injury related to processed or unprocessed food products, recalls or rejected shipments of products, and training material from regulatory agencies pertaining to regulated products).

B. Development of specific procedures for exchanging information in the early stages of an investigation, whenever possible, rather than in the last stages or at the conclusion of the investigation, during emergency situations such as the seizure, detention, or withdrawal of products because of safety reasons or other reasons.

C. Determining the information that should be exchanged among the participants prior to making information related to emergency situations public.

D. Dialogue and other communication intended to achieve, where appropriate, common positions on emerging international standards or practices in meetings of international organizations such as the Codex Alimentarius Commission and the Organization International des Epizooties.

E. Identification of research projects and studies to support the scientific basis for regulatory requirements and actions that are of mutual interest, such as those related to epidemiology, exposure estimates, risk identification, and other information that would form the bases for pre- and post-market risk assessments, risk analysis, and safety evaluations.

F. Identification of regulatory and scientific standards, procedures, and other requirements where there is potential for immediate and future harmonization.

G. Identification and implementation of joint training for the purpose of mutual understanding and harmonization of surveillance and compliance activities.

H. Exchange of information and data resulting from an investigation conducted by the participants when these investigations have been related to food-borne illnesses.

Article 4
Confidentiality

The participants expect that most of the information exchanged under this Arrangement may be provided in a form appropriate for public dissemination under the laws of the transmitting participants. Information that is not appropriate for public dissemination should be shared according to the procedures and policies of the participants as permitted by the laws of the participants.

The participants also should provide the other participants with copies of their laws and regulations governing their ability to maintain information as confidential.

With regard to any non-public information that may be provided to SAGARPA or SSA by U.S. participants, such transmissions should be made in accordance with the specific signed confidentiality commitments and other requirements of those participants.

Article 5
Funding

Each participant intends to fund its own activities subject to the availability of appropriated funds, personnel, and other resources.

Article 6
Plan of Work

The participants intend to develop a Plan of Work describing specific activities to be carried out under this Arrangement. Liaison Officers intend to meet at least once a year to review and revise the Plan of Work.

Liaison Officers will be as follows:

A. For DHHS

Director
Division of Emergency and Investigational Operations
U.S. Food and Drug Administration
5600 Fishers Lane
Rockville MD 20857
Telephone: 301- 443-1240 or 301- 827-5660
Fax: 301- 443-3757

International Activities Coordinator for Food
Center for Food Safety and Applied Nutrition
200 C Street, SW
Washington, D.C. 20204
Telephone: 202-260-2314
Fax: 202-260-9653

B. For USDA

Assistant Deputy Administrator
Program Coordination and Evaluation
Office of Policy, Program Development, and Evaluation
Food Safety Inspection Service
Department of Agriculture
1400 Independence Avenue, SW
Room 4866 South Building
Washington, D.C. 2500-3700
Telephone: 202-720-3473
Fax: 202-720-3856

C. For SSA

Federal Commission Against Sanitary Risks
Direction General of Sanitary Control of Products and Services
Donceles 39, 1er Piso
Col.Centro. 06010 México, D.F.
Telephone: 525-512-3050 or 525-521-9134
Fax: 525-521-9628

D. For SAGARPA

Director in Chief
Comision Nacional de Seguridad Agropecuaria (CONASAG)
Amores 321, 1er Piso
Col. Del Valle, C.P. 03100, México, D.F.
Telephone: 525-536-6626 or 525-687-7954
Fax: 525-687-7938

Article 7
Settlement of Disputes

The participants should strive to resolve by mutual decision any disputes that arise from the interpretation or application of this Arrangement.

Article 8
Duration

This Arrangement commences upon signature by all participants for ten (10) years. It may be extended for an additional ten-year period, after evaluation by the participants.

The participants may amend this document, by mutual written consent, specifying the date the amended Arrangement commences.

This Arrangement may be terminated by any participant upon thirty days advance written notice to the other participants.

Termination of this Arrangement does not affect the completion of cooperation activities that may have been formalized prior to termination.

SIGNED at Washington, D.C., this fourth day of September 2001, in quadruplicate, in the Spanish and English languages.

FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES OF THE UNITED STATES OF AMERICA

FOR THE SECRETARIAT OF HEALTH OF THE UNITED MEXICAN STATES

FOR THE DEPARTMENT OF AGRICULTURE OF THE UNITED STATES OF AMERICA

FOR THE SECRETARIAT OF AGRICULTURE, LIVESTOCK, RURAL DEVELOPMENT, FISH, AND FOOD OF THE UNITED MEXICAN STATES

[FR Doc. 01–31576 Filed 12–21–01; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices 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). At least one portion of the meeting will be closed to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 10, 2002, from 9:30 a.m. to 5 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Hany W. Demian, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12521. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on premarket approval application (PMA) for a spinal fusion cage with a growth

factor soaked in a collagen sponge intended for use to treat lumbar degenerative disc disease. Background information, including the agenda and questions for the committee, will be available to the public on January 9, 2002, on the Internet at http://www.fda.gov/cdrh/panelmtg.html.

Procedure: On January 10, 2002, from 9:30 a.m. to 1 p.m., and from 2 p.m. to 5 p.m., the meeting is open to the public. 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 January 4, 2002. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10 a.m. on January 10, 2002. Near the end of the committee deliberations for the PMA, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 4, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Presentation of Data: On January 10, 2002, from 1 p.m. to 2 p.m., the meeting will be closed to the public to permit the committee to discuss and review trade secret and/or confidential commercial information presented by a sponsor (5 U.S.C. 552b(c)(4)).

FDA regrets that it was unable to publish this notice 15 days prior to the January 10, 2002, Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 18, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–31578 Filed 12–21–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware and Lehigh Heritage Corridor Commission Meeting

AGENCY: Department of Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Friday, January 11, 2002. Time 1:30 p.m. to 4 p.m.

Address: Bethlehem Township Municipal Building, 4225 Easton Avenue, Bethlehem PA 18020.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 10 E. Church Street, Room A–208, Bethlehem, PA 18018, (610) 861–9345.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

Dated: December 18, 2001.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 01–31585 Filed 12–21–01; 8:45 am]

BILLING CODE 6820–PE–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–459]

In the Matter of Certain Garage Door Operators Including Components Thereof; Notice of Decision to Modify an Initial Determination Granting a Motion to Intervene

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to modify an initial determination (ID) (Order No. 5), as supplemented by Order No. 7, issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ID is modified to the extent that the restrictions placed an intervenor's participation in the investigation are lifted.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3104. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol.public*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 16, 2001, based on a complaint filed by The Chamberlain Group, Inc. ("Chamberlain") against six entities, not including Microchip Technology Inc. (Microchip). 66 FR 37704. Chamberlain's complaint alleges violations of section 337 in the importation into the United States, sale for importation, and/or sale within the United States after importation of certain garage door operators by reason of infringement of certain claims of Chamberlain's U.S. Letters Patents Nos. Re. 35,364 and Re. 36,703. On August 6, 2001, Microchip filed a motion to intervene in this investigation.

On October 1, 2001, the ALJ issued an ID (Order No. 5) granting Microchip's motion. The ID allowed Microchip to become an "intervenor" in the present investigation, but placed restrictions on Microchip's participation. Under the ID, Microchip was allowed to participate in the discovery phase of the investigation, but was not allowed to notice depositions during discovery or participate as a party at the hearing. On October 30, 2001, the Commission

determined to review the ID and remanded the ID to the ALJ for either a modification of the ID or a statement of reasons supporting his decision to allow only limited intervention. Commission Order and Notice of Review, dated October 30, 2001.

On November 20, 2001, the ALJ issued Order No. 7, in which he supplied reasons for the restrictions that he placed on Microchip. Microchip filed a submission concerning Order No.7 on November 28, 2001. On December 5, 2001, complainant Chamberlain responded in opposition to the submission. On the same date, the Commission investigative attorney filed a response in support of Microchip.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.45 of the Commission's rules of practice and procedure, 19 CFR 210.45.

By order of the Commission.

Issued: December 18, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–31600 Filed 12–21–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–466]

In the Matter of Certain Organizer Racks and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 21, 2001, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Spectrum Concepts, Inc. of Carlsbad, California. An amended complaint was filed on December 14, 2001, and supplementary letters were filed on November 27 and December 14, 2001. The complaint, as amended and supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain organizer racks and products containing same, by reason of infringement of claims 1, 6, 8, 11, 12, 13, and 24 of U.S. Letters Patent 5,740,924. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist order.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's ADD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public*.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2580.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10 (2001).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 18, 2001, *Ordered that*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain organizer racks and products containing same, by reason of infringement of claims 1, 6, 8, 11, 12, 13, or 24 of U.S. Letters Patent 5,740,924, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Spectrum Concepts, Inc., 1911 Palomar Oaks Way, Carlsbad, CA 92008–6511;

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Bryan Plastics Ltd., 5 Bovis Pointe, Claire, Quebec, Canada H9R 4N3;

(c) Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation;

(3) For the investigation so instituted, the Honorable Delbert R. Terrill, Jr. is designated as the presiding administrative law judge;

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.13. Pursuant to 19 CFR §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: December 18, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–31559 Filed 12–21–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the

Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,967; Bethlehem Steel Corp., Lackawanna Coke Div., Lackawanna, NY

TA–W–39,977; Lamtech, LLC, Hartsville, TN

TA–W–39,234; Globe Building Materials, Inc., Cornell, WI

TA–40,186; B.G. Sullzle, Syracuse, NY

TA–W–39,580 & A; Elkay Manufacturing Co., Lanark, IL and Oakbrook, IL

TA–W–40.065; Haemerw-right Tool and Die, Inc., Saegertown, PA

TA–W–39,694; C.T. Gamble Acquisition Corp., Ohmite Holding, LLC, Delanco, NJ

TA–W–39,067A; Thomson Saginaw Ball Screw Co. LLC, Cut Center, Saginaw, MI≤

TA–W–40,168; Stitches, Inc., El Paso, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39.681; United Shoe Machinery Corp., Wilmington, MA

TA–W–40,119; Tennford Weaving, Sanford, ME

TA–W–39,959; Teccor Electronics, A Div. Of Invensys, Irving, TX

TA–W–40,091; Bolivar Tees, Bolivar, MO

TA–W–39,988; Stephens Pipe and Steel, Russell Springs, KY

TA–W–40,118; Displaytech, Inc., Longmont, Co

TA–W–39,868; Yarway Corp., A Div. of Tyco International. Blue Bell, PA

TA–W–39,850; Seagate Technology, Shakopee, MN

TA–W–38,751; Dayton Tire, Oklahoma City, OK

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–39,935; Contract Apparel, Inc., El Paso, TX

TA–W–40,098; Toastmaster, Inc., A Subsidiary of Salton, Inc., Boonville, MO

TA–W–40,023; National Ford Chemicals Co., Inc., Fort Mill, SC

TA–W–39,974; Motorola, Inc., Global Telecommunications Solution Sector, Arlington Heights, IL

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,067; Thomson Saginaw Ball Screw Co LLC, Saginaw, MI: April 3, 2000

TA–W–40,221; Olympic Mill Services, A Div. Of Tube City, Inc., Employed at Auburn Steel Co., Lemont, IL: September 26, 2000.

TA–W–39,566; Louisiana Pacific Corp., Rouge River Veneer Plant, Rogue River, OR: June 12, 2000.

TA–W–39,271; The CustomShop, com, Franklin, NJ: May 2, 200.

TA–W–39,407; Greer Steel Co., Dover, OH: June 7, 2000.

TA–W–114; Caroll Wren, Inc., Long Island City, NY: April 10, 2000.

TA–W–40,021 & A; Alba-Waldensian, Inc., Rutherfordton Plant, Rutherfordton, NC and John Louis Plant, Valdese, NC: August 27, 2000.

TA–W–40,024; Phillips-Van Heusen, Ozark, AL: August 28, 2000.

TA–W–40,019 & A; Carolina Mills, Inc., Plant #23, Gastonia, NC and Plant #26, St. Pauls, NC: August 29, 2000.

TA–W–39,715; Ansell Healthcare, Inc., Massillon, OH: July 20, 2000.

TA–W–39,962; Specialty Coatings of Virginia, Ltd, Ridgeway, VA: August 20, 2000.

TA–W–40,159; Mirello Manufacturing, Cartersville, GA: September 18, 2000.

TA–W–40,129; Partek Forest, LLC, Gladstone, MI: September 17, 2000.

TA–W–40,139; Volvo Construction Equipment North America, Inc., Asheville Plant, Skyland, NC: September 13, 2000.

TA–W–39,419; Kentucky Electric Steel, Ashland, KY: May 11, 2000.

TA–W–39,406; Artesyn Technolgoies, Red Falls, MN: May 21, 2000.

TA–W–40,116; Metro Fabrics, Inc., New York, NY: September 10, 2000.

TA–W–40.141; Findlay Industries, Ohio City, OH: September 5, 2000.

TA–W–40,210; Tepro of Florida, Inc., Clearwater, FL: September 25, 2000.

TA–W–40,045; Maxwell Corp of America, Conyers, GA: August 28, 2000.

TA–W–40,169; Curtain and Drapery Fashions, Gastonia, NC: September 20, 2000.

TA–W–409,015; Versatile Mold and Design, Inc., Rutledge, GA: August 28, 2000.

TA–W–40,154; E–H Barre, Robinson, IL: September 9, 2000.

TA–W–39,623; E.J. Victor, Inc., Casegoods Div., Morganton, NC: July 2, 2000.

TA–W–39,329; Dystar L.P., Mt Holly, NC: May 15, 2000.

TA–W–40,166; Security Chain Manufacturing, Div. of Burns Brothers, Inc., Clackamas, OR: September 12, 2000.

TA–W–39,210; General Electric Co., Industrial Systems, Houston, TX: April 26, 2000.

TA–W–39,972; Tyco Electronics Corp., Communications, Computer and Electronics Div., Carlisle, PA: August 23, 2000.

TA–W–40,334; Matel, Inc., Murray Production Facility, Murray, KY: October 26, 2000.

TA–W–40,187; Advanced Wood Resources, Brownsville, OR: September 22, 2000.

TA–W–39,871; McCord Winn Textron, A Div. Of Textron Automotive Co., Inc., Manchester, NH: August 20, 2000.

TA–W–40,265; McGhan Medical, Santa Barbara, CA: Sepgember 29, 2000.

TA–W–39,451; Phelps Dodge Morenci, Inc., Morenci, AZ: June 4, 2000.

TA–W–39,803; New Monarch Tool, Inc., Cortland, NY: July 26, 2000.

TA–W–39,927; Pechiney Plastic Packaging, Inc., Cleveland, OH: August 10, 2000.

TA–W–39,899; Tyco Electronics Corp., East Berlin, PA: August 3, 2000.

TA–W–39,563; Excalibur Tubing Corp., Benwood, WV: June 15, 2000.

TA–W–39,088; WSW Company of Sharon, Inc., Sharon, TN: April 5, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of December, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases of imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05352; Visteon Systems, LLC, Connersville, IN
NAFTA–TAA–05518; Appleton Papers, Inc., Harrisburg Plant, Camp Hill, PA
NAFTA–TAA–05360; Con Lime, Inc., Bellefonte, PA
NAFTA–TAA–05262; Lamtech, LLC, Hartsville, TN
NAFTA–TAA–04781; Globe Building Materials, Inc., Cornell, WI
NAFTA–TAA–04958; Philips Display Components, Display Components, Ottawa, OH
NAFTA–TAA–05421; Stitches, Inc., El Paso, TX
NAFTA–TAA–05389; Stephens Pipe and Steel, Russell Springs, KY
NAFTA–TAA–04780; WSW Company of Sharon, Inc., Sharon, TN
NAFTA–TAA–05281; Haemer-Wright Tool and Die, Inc., Saegertown, PA
NAFTA–TAA–04759A; Thomson Saginaw Ball Screw Company LLC, Cut Center, Saginaw, MI

The workers firm does not produce an article as required for certification under section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended.

NAFTA–TAA–05295; Genlyte Thomas Group, LLC, Hopkinsville, KY
NAFTA–TAA–05550; Datamark, Inc., El Paso, TX
NAFTA–TAA–05274; Toastmaster, Inc., A Subsidiary of Salton, Inc., Boonville, MO

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–04759; Thomson Saginaw Ball Screw Company LLC, Saginaw, MI: April 12, 2000.
NAFTA–TAA–05001; Louisiana Pacific Corp., Rogue River Veneer Plant, Rogue River, OR: June 18, 2000.
NAFTA–TAA–05259; Specialty Coatings of Virginia, Ltd, Ridgeway, VA: August 20, 2000.
NAFTA–TAA–05212; Yarway Corp., A Div. of Tyco International, Blue Bell, PA: August 8, 2000.
NAFTA–TAA–05420; Communications and Power Industries, Inc., Satcom Div., Palo Alto, CA: October 4, 2000.
NAFTA–TAA–05322; Volvo Construction Equipment North America, Inc., Asheville Plant, Skyland, NC: September 13, 2000.
NAFTA–TAA–05468; CW Industries, Hazleton Enterprises, Hazleton, PA: October 22, 2000.
NAFTA–TAA–05246; Teccor Electronics, A Div. of Invensys, Irving, TX: August 17, 2000.
NAFTA–TAA–05523; Motorola, Automotive Communications and Electronics Systems, Elk Grove Village, IL: November 5, 2000.
NAFTA–TAA–05333; Tyco International, Anderson Greenwood Crosby Div., Wrentham, MA: August 31, 2000.
NAFTA–TAA–05363; Advanced Wood Resources, Brownville, OR September 22, 2000.
NAFTA–TAA–05317; Tyco Electronics Corp., Communications, Computer and Electronics Div., Carlisle, PA: September 7, 2000.
NAFTA–TAA–05474; Bremen-Bowdon Investment Company, Bowdon, GA: October 24, 2000.
NAFTA–TAA–05487; Crouzet Corp., Carrollton, TX: June 29, 2001.
NAFTA–TAA–05243; Maxell Corp., of America, Conyers, GA: August 29, 2000.
NAFTA–TAA–5189; Tyco Electronics Corp., East Berlin, PA: August 3, 2000.
NAFTA–TAA–05251; Willamette Industries, Inc., Korpine Div., Bend, OR: August 17, 2000.
NAFTA–TAA–05458; Scientific Atlanta, Inc., Norcross, GA: October 22, 2000.
NAFTA–TAA–05044; Kimlor Mills, Inc., Orangeburg, SC: June 30, 2000.
NAFTA–TAA–05308 and A; Carolina Mills, Inc., Plant #23, Gastonia, NC and Plant #26, St. Pauls, NC: September 4, 2000.

I hereby certify that the aforementioned determinations were issued during the month of December, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 18, 2001.

Edward A. Tomchick,

Director, Division of, Trade Adjustment Assistance.

[FR Doc. 01–31625 Filed 12–21–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[Docket No. TA–W–38, 893] and [NAFTA–04613]

The Budd Company Stamping and Frame Division Philadelphia, PA, Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of July 9, 2001 the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance, applicable to petition numbers TA–W–38,893 and NAFTA 04613, respectively. The denial notices were signed on May 10, 2001 and published in the **Federal Register** on May 23, 2001 (66 FR 28553 and .28554, respectively).

The petitioner indicated that the subject firm opened a new stamping plant in Silao, Mexico during the fall of 2000. The petitioner further stated that the opening of the Mexican plant resulted in a significant shift in plant production to Mexico.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 30th day of November 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–31619 Filed 12–21–01; 8:45 am]

BILLING CODE 4510–30–M.

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November and December, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,506; Unico, Sanford, ME
TA–W–39,806; Kysor Panel Systems, a Div. of Enodis Corp., Portland, OR
TA–W–39,883; FB Johnston Group, North Carolina Div., Hillsborough, NC
TA–W–39,033 G.E. Lighting, Inc., Bucyrus, OH
TA–W–39,511; Philips Display Components, Display Components, Ottawa, OH
TA–W–40.069; Westvaco Corp., Tyrone, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,926; Anvil Knitwear, Inc., King Mountain, NC
TA–W–39,991; Broyhill Furniture, Plant #34, Lenoir, NC
TA–W–39,955; Pennco Tool & Die, Meadville, PA
TA–W–39,703; Echo Bay Minerals Co., Battle Mountain, NV
TA–W–40,254; Graphic Packaging, Portland, OR

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–40,140; Wormser Knitting Mills, Charlotte, NC
TA–W–40,262; Parago, Inc., Coppell, TX

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–39,682; Wellmade Industries, New York, New York

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–40,022; Tyco International, Anderson Greenwood Crosby Div., Wrentham, MA: August 29, 2000.
TA–W–40,373 & A, B, C, D; Tect, Inc., Topton Sewing Plant, Topton, Pa., Cutting and Automated Sewing Dept., Allentown, PA, Knitting Dept, Allentown, PA, Temple Sewing Plant, Temple, PA and Sewing and Embellishment Dept., Allentown, PA: October 5, 2000.
TA–W–40,074; Kentucky Apparel, Tompkinsville, KY: September 5, 2000.
TA–W–39,909; RF Monolithics, Inc., Dallas, TX: August 13, 2000.
TA–W–39,858; Fedders Corp., Columbia Specialties, Inc., Columbia, TN: August 20, 2000.
TA–W–40,213; Communications and Power Industries, Inc., Satcom Div., Palo Alto, CA: October 4, 2000.
TA–W–40,247; IFF, Inc., Salem, OR: October 2, 2000.
TA–W–40,042; WP Textiles Processing Corp., Richmond, VA: September 4, 2000.
TA–W–39,874; Zinc Corp. of America, Balmat Mining Div., Hailesboro, NY: August 20, 2000.
TA–W–39,893; Union Apparel, Inc., Norvelt, PA: August 8, 2000.
TA–W–39,767; Bremen-Bowdon Investment Col, Bowdon, GA: July 20, 2000.
TA–W–39,805; Donaldson Co., Inc., Dust Collection Equipment, Lousville, KY: July 27, 2000.
TA–W–40,054; Fairchild Semiconductor, (Formerly Intersil Corp), Mountaintop, PA: September 2, 2000.
TA–W–39,489; California Cedar Products Co., Roseburg Sawmill, Roseburg, OR: June 7, 2000
TA–W–39,895; Crossville Rubber, Inc., Crossville, TN: August 15, 2000.
TA–W–39,896; KPT, Inc., Bloomfield, IN: August 7, 2000

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of November and December, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of

articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NATA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were nct met. Imports from Canada or Mexico did not contribute importantly to workers' separations. there was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05164; Kysor Panel Systems, A Div. of Enodis Corp., Portland, OR

NAFTA–TAA–04953; G.E. Lighting, Inc., Bucyrus, OH

NAFTA–TAA–04455; Sunlite Casual Furniture, Paragould, AR

NAFTA–TAA–05326; FB Johnston Group, North Carolina Div., Hillsborough, NC

NAFTA–TAA–05081 & A, B, C & G; Spartan International, Inc., Cherokee Finishing Plant, SC, Spartan Plant, Spartansburg, SC, Rosemont Plant, Jonesville, SC King Finishing Plant, Dover, GA and Retail Business Office, Charlotte, NC

The workers firm does not produce an article as required for certification under section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended.

NAFTA–TAA–05346; Contract Apparel, Inc., El Paso, TX

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05081D; & E, F, H & I; Spartan International, King Mill, August, GA, Cleveland Mills, Lawndale, NC, Cleveland-Caroknit, Jefferson SC, Sales Office, New York, NY and Corporate Office, Spartanburg, SC: July 13, 2000.

NAFTA–TAA–05434; Tect, Inc., Sewing and Embellishment Departments, Allentown, PA: October 12, 2000.

NAFTA–TAA–05433; Tect, Inc., Temple Sewing Plant, Temple, PA: October 12, 2000.

NAFTA–TAA–05430; Tect, Inc., Topton Sewing Plants, Topton, PA: October 12, 2000.

NAFTA–TAA–05432; Tect, Inc., Knitting Department, Allentown, PA: October 12, 2000.

NAFTA–TAA–05349; Brooks Automation, Tracking Div., Including Leased Workers of K Force Professional Staffing, Volt Contractors, Superior Contractors and Aerotek Contractors, Colorado Springs, Co: September 20, 2000.

NAFTA–TAA–05393; Liebert Corp., Irvine California Operations, Irvine, CA: September 27, 2000.

NAFTA–TAA–04988; California Cedar Products Co., Roseburg Sawmill, Roseburg, OR: June 11, 2000.

NAFTA–TAA–05342; Curtain and Drapery Fashions, Inc., Gastonia, NC: September 20, 2000.

NAFTA–TAA–05431; Tect, Inc., Cutting and Automated Sewing Departments, Allentown, PA: October 12, 2000.

NAFTA–TAA–05374; Axiohm Transaction Solutions, Inc., American Magnetics Division, Cypress, CA: September 20, 2000.

NAFTA–TAA–05494; Sportrack Accessories, Div. of Sportrack Automotive, Shelburne, VT: October 26, 2000.

NAFTA–TAA–05398; IFF, Inc., Salem, OR: October 3, 2000.

I hereby certify that the aforementioned determinations were issued during the month of November and December, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 30, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–31634 Filed 12–21–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,809]

Blue Mountain Products Pendleton, OR; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of July 17, 2001, the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, petition TA–W–38,809. The denial notice was signed on June 18, 2001 and published in the **Federal Register** on July 5, 2001 (66 FR 35462).

The Department has reviewed the request for reconsideration and has determined that further clarification of a survey response from a major customer of the subject firm would be appropriate.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 11th day of December 2001.

Edward A. Tomchick,

Director, Division of Trade. Adjustment Assistant.

[FR Doc. 01–31624 Filed 12–21–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,908]

Cleveland Caroknit Lawndale, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 27, 2001, in response to a worker petition which was filed on behalf of workers at Cleveland Caroknit, Lawndale, North Carolina.

An investigation applicable to the petitioning group of workers is in process (TA–W–39,518). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 11th day of December 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment. Assistance.

[FR Doc. 01–31632 Filed 12–21–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,133 and TA–W–40,133A]

Eagle Knitting Mills, Inc. Shawano, WI; Eagle Knitting Mills, Inc. Kenosha, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 28, 2001, in response to a worker petition at Eagle Knitting Mills, Inc., Shawano and Kenosha, Wisconsin.

A negative determination applicable to the petitioning group of workers was issued on May 14, 2001 (TA–W–39,070). The petition filed in the subject case is identical to that filed for the prior case. No new information is evident which

would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 10th day of December 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment, Assistance.

[FR Doc. 01–31631 Filed 12–21–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,068]

Elizabeth Webbing, Inc. Central Falls, RI; Notice of Revised Determination on Reconsideration

On November 13, 2001, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on December 5, 2001 (66 FR 63263).

On June 25, 2001 the Department initially denied TAA to workers of Elizabeth Webbing, Inc., Central Falls, Rhode Island producing nylon and polyester webbing because the "contributed importantly" group eligibility requirement of section 222 of the Trade Act of 1974, as amended, was not met.

On reconsideration, the department surveyed additional customers of the subject plant regarding their purchases of nylon and polyester webbing during the relevant period. The survey revealed that customers increased their imports of nylon and polyester webbing, while decreasing their purchases from the subject plant during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with nylon and polyester webbing, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Elizabeth Webbing, Inc., Central Falls, Rhode Island. In accordance with the provisions of the Act, I make the following certification:

All workers of Elizabeth Webbing, Inc., Central Falls, Rhode Island who became totally or partially separated from employment on or after April 9, 2000 through two years of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 12th day of December 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–31623 Filed 12–21–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,921]

Glenshaw Glass Company, Inc. Glenshaw, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of June 11, 2001, the workers requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, petition TA–W–38,921. The denial notice was signed on May 15, 2001 and published in the **Federal Register** on May 25, 2001 (66 FR 28928).

The Department has reviewed the request for reconsideration and has determined that the Department will examine the petitioner's allegation claiming that the parent customer is importing glass containers similar to what the subject plant produced and selling the glass containers to the subject firm's customer base.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is therefore, granted.

Signed at Washington, DC this 30th day of November 2001.

Edward A. Tomchick,

Director, Division of Trade, Adjustment Assistance.

[FR Doc. 01–31620 Filed 12–21–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,434]

Kentucky, Electric Steel, Ashland, KY; Notice of Termination of Investigation

Pursuant to section 221 of Trade Act of 1974, an investigation was initiated on June 18, 2001 in response to a worker petition which was filed on the same date on behalf of workers at Kentucky Electric Steel, Ashland, Kentucky.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–39,419). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 13th day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–31628 Filed 12–21–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,953]

Steag Hamatech, Inc., Saco, ME; Notice of Revised Determination on Reconsideration

By letter of July 9, 2001, the company requested administrative reconsideration regrading the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on May 21, 2001, based on the finding that the "contributed importantly;" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that imports did not contribute importantly to worker separations at the firm. A major portion of production was for the export market. The reason for the separations at the subject firm was the transfer of production aboard. The denial notice was published in the **Federal Register** on June 8, 2001 (66 FR 30947).

To support the request for reconsideration, the company provided additional information clarifying how the company was impacted by imported products like and directly competitive with what was produced at the subject firm.

The company indicated that they were the only domestic manufacturer of this type of equipment (referred to as replication equipment) and that the machinery is a type of capital equipment, which normally is not purchased on an annual basis. The domestic market accounted for a

meaningful portion of the subject plant's customer base.

The additional information supplied by the company helped clarity customer response(s) in the survey that was conducted during the original investigation. Upon examination of the survey, it is now clear that major customer significantly increased their imports of machinery like and directly competitive with what the subject plant produced during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports or articles like or directly competitive with those produced at STEAG Hamatech, Saco, Maine contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firms. In accordance with the provisions of the Act, I the following certification:

All workers of STEAG Hamatech, Saco, Maine, who became totally or partially separated from employment on or after March 21, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Dated: Signed in Washington, DC this 11th day of December 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–31622 Filed 12–21–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,989]

Trico Steel Company Decatur, AL; Notice of Negative Determination Regarding Application for Reconsideration

By application dated July 26, 2001, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on July 5, 2001, and published in the **Federal Register** on July 20, 2001 (66 FR 38026).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Trico Steel Co., Decatur, Alabama was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of customers of the workers' firm. Respondents reported that they either did not import or had very minor and declining imports in the relevant time periods.

The petitioner feels that the time period considered in the investigation is not correct. The petitioner states that the January through March 2001 period is not representative of the relevant period. That is, the petitioner indicates that imports of hot rolled products were illegally dumped into the United States during the May through November 2000 period and therefore the Department should look at the 2000 time frame.

During the initial investigation, plant and survey data were examined for the following periods: 1999, 2000 and January through March 2001 over the corresponding 2000 period. Plant sales and production increased substantially from 1999 to 2000, followed by declines through the closure of the plant during March 2001. Employment data reported by the company was stable during the 2000 period.

The survey as already indicated, revealed that the respondents (all customers supplied by the company responded to the survey) reported that they did not import or had very minor and declining imports from 1999 to 2000. The survey further revealed that, during the January through March 2001 period over the corresponding 2000 period, imports were negligible.

Examination of industry data further revealed that United States imports of hot rolled carbon sheet steel decreased both absolutely and relative to the U.S shipments in the January through April 2001 period, compared to the same period one year earlier. In the year 2000, both U.S. shipments and U.S. imports of hot rolled carbon sheet steel increased over the 1999 period. The ratio of U.S. imports to U.S. shipments remained relatively stable in 1999 into 2000. However, during the last eight months of 2000 of the ratio of U.S. imports to U.S. shipments declined.

The petitioner further indicates that the International Trade Commission (ITC) issued a preliminary dumping duties decision against eleven countries and that the ITC investigation would examine possible trade restrictions relating to the dumping of steel under the 201 provision of the trade act.

The Department of Labor does take into consideration such factors as the International Trade Commission (ITC) preliminary dumping duties and the factors that are alleged and decided on, but also investigates each company on the basis of how increased imports impacted products produced by the petitioning plant and how increasing imports contributed importantly to the declines in employment.

The petitioner further indicates that, during the period of January through March 2001, Trico Steel Company was forced to reduce it's capacity by 50% because of high customer inventories of foreign steel that was imported during the fourth quarter of 2000.

Inventory level build up can not be considered in meeting the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error of misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 12th day of December 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–31621 Filed 12–21–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5085]

Besser Lithibar, Holland, MI; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on July 13, 2001, in response

to a petition filed on behalf of workers at Besser Lithibar, Holland, Michigan. Workers produce automated material handling equipment.

A negative determination on an identical petition regarding the same worker group was issued on August 31, 2001. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 12th day of December, 2001.

Linda G. Poole.

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–31626 Filed 12–21–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04608]

Collis, Inc., Elizabethtown, KY; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of August 30, 2001 the United Steelworkers of America, AFL–CIO–CLC, District 8 requested administrative reconsideration of the Department of Labor's Notice of negative Determination Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance. The denial notice was signed on August 8, 2001 and published in the **Federal Register** on August 23, 2001 (66 FR 44378).

The petitioner presented additional information that appears to warrant additional investigation. The information provided by the petitioner shows that a portion of plant production may have been shifted to Mexico. The information further shows the possibility of increased company imports from Mexico contributing importantly to the layoffs at the subject plant.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 17th day of December 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–31629 Filed 12–21–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Govenor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request if filed in writing with the Director of DTAA not later than January 7, 2002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than January 7, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 11th day of December, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Subject Firm	Location	Date received at Governor's Office	Petition No.	Articles Produced
Dnkyo America (Co.)	Columbus, IN	12/06/2001	NAFTA–5,601	farm equipment.
Intervet, Inc. (Co.)	Gainesville, GA	12/04/2001	NAFTA–5,602	poultry vaccine.
In Vogue Apparel (Wkrs)	West Hazelton, PA	12/07/2001	NAFTA–5,603	women's slacks.
Jones Aparel Group USA (Wkrs)	Bristol, PA	12/07/2001	NAFTA–5,604	garments.
Hershey Foods (Co.)	Pennsburg, PA	12/07/2001	NAFTA–5,605	confectionary products.
Cooper Standard Automotive (Wkrs).	Fairview, MI	12/07/2001	NAFTA–5,606	automotive rubber tubing.
ANR Pipeline (Wkrs)	Detroit, MI	12/05/2001	NAFTA–5,607	natural gas transmission.
TRW Aeronavtical Systems (Wkrs)	Aurora, OH	12/06/2001	NAFTA–5,608	generators.
Key Industries (Co.)	Buffalo, MO	12/05/2001	NAFTA–5,609	coverall, overalls and jackets.
General Electric Transportation Global (Wkrs).	Grain Valley, MO	12/05/2001	NAFTA–5,610	railroad electronic & communications.
Stylemaster Apparel (Wkrs)	Union, MO	12/05/2001	NAFTA–5,611	men's and women's baseball caps etc.
Domestic Corp. (UAW)	LaGrange, IN	12/03/2001	NAFTA–5,612	air conditioners.
Hibbing Taconite—Cliffs Mining (Wrks).	Hibbing, MN	12/04/2001	NAFTA–5,613	semi finished slabs & finished steel.
Emerson Electronic Connector Components (Wkrs).	Waseca, MN	12/04/2001	NAFTA–5,614	RF coaxial connector assemblies.
Kurt Manufacturing (Wkrs)	Minneapolis, MN	12/05/2001	NAFTA–5,615	machine die cast.

Subject Firm	Location	Date received at Governor's Office	Petition No.	Articles Produced
Midland Steel Products (Co.)	Janesville, WI	12/05/2001	NAFTA–5,616	steel.
Electronic Assembly Corp. (Wkrs)	Neenak, WI	12/04/2001	NAFTA–5,617	electronic products.
Cherry Automative (Wkrs)	Pleasant Prairie, WI	11/13/2001	NAFTA–5,618	electronic products.
Graham Tech (Co.)	Cochranton, PA	12/07/2001	NAFTA–5,619	gaging.
EM Solutions (Wkrs)	Longmont, CO	12/06/2001	NAFTA–5,620	
Biltwell Clothing—Rector Sportwear (Co.).	Rector, AZ	12/05/2001	NAFTA/05/2001	men's tailored pants and slacks.
Lexmark International (Co.)	Lexington, KY	12/05/2001	NAFT–5,622	inkjet printers and cartridges.
Protel, Inc. (Wkrs)	Lakeland, FL	12/03/2001	NAFTA–5,623	pay phones.
AVX Corporation (Wkrs)	Vancouver, WA	12/04/2001	NAFTA–5,624	electronic capacitor.
Alcatel USA Marketing	Andover, MA	11/30/3001	NAFTA–5,625	router.
Milmaukee Electric (Wkrs)	Blytterville, AR	12/05/2001	NAFTA–5,626	electric power tools.
Freightliner PMP (Wkrs)	Gastonia, NC	12/04/2001	NAFTA–5,627	trucks and parts.
Cooper Bussman (Wkrs)	Goldsboro, NC	12/05/2001	NAFTA–5,628	fuses & fuseholders.
ASARCO (Co.)	Strawberry Plains, TN	12/05/2001	NAFTA–5,629	zinc.
Meridian Automotive Systems (UAW).	Controlia, IL	11/30/2001	NAFTA–5,630	fixtures, water jets, heat shield molds.
VF Jeanswear Limited Partnership (Wkrs).	Shenandoah, VA	12/05/2001	NAFTA–5,631	men's and women's bluejeans & casualwear.
VF Jeanswear Limited Partnership (Wkrs).	El Paso, TX	12/07/2001	NAFTA–5,632	men's and women's pants.
Evergreen Wholesale Florist (Wkrs)	Seattle, WA	12/10/2001	NAFTA–5,633	florist—flower arrangement.

[FR Doc. 01–31633 Filed 12–26–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5254]

Fashion Works, Inc. Dallas, TX; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on August 23, 2001, in response to a petition filed by the company on behalf of workers at Fashion Works, Inc., Dallas, Texas.

The petitioner requests the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 10th day of December, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–31630 Filed 12–21–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–005302]

Tyco Electronics, TDI Division, Romeoville, Illinois; Notice of Termination

Pursuant to Title V of the North American Free Trade Agreement Implementation Act Pub. L. 103–1 concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on September 4, 2001, in response to a petition filed on behalf of workers at Tyco Electronics, TDI Division, Romeoville, Illinois. Workers produced battery packs.

An active certification covering the petitioning group of workers remains in effect (NAFTA–004168). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 11th day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–31627 Filed 12–21–01; 8:45 am]

BILLING CODE 4510–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2000–2 CARP CD 93–97]

Distribution of 1993, 1994, 1995, 1996 and 1997 Cable Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Order.

SUMMARY: The Librarian of Congress, upon the recommendation of the Register of Copyrights, announces his rejection of the initial and revised reports of the Copyright Arbitration Royalty Panel ("CARP") in the Phase II proceeding in the syndicated programming category for distribution of the 1997 cable royalty funds, and remands the case for a new proceeding before a new CARP.

EFFECTIVE DATE: December 26, 2001.

ADDRESSES: The full text of the CARP's initial report and revised report to the Librarian of Congress are available for inspection and copying during normal business hours in the Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE, Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, Copyright Arbitration Royalty Panel ("CARP"), P.O. Box 70977, Southwest Station, Washington, DC 20024–0400. Telephone (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Each year, cable systems in the United States submit royalties to the Copyright Office under a statutory license which allows cable systems to retransmit over-the-air television and radio broadcast signals to their subscribers. 17 U.S.C. 111. These royalties are, in turn, distributed in one of two ways to copyright owners whose works were included in the cable retransmissions of over-the-air television and radio broadcast signals and who timely filed a claim for royalties with the Copyright Office. The copyright owners may either negotiate a settlement agreement amongst themselves as to the distribution of the royalty fees or, if they cannot agree, the Librarian of Congress may convene one or more Copyright Arbitration Royalty Panels ("CARPs") to determine the distribution of the royalty fees which remain in controversy. *See* 17 U.S.C. chapter 8.

Cable royalty distribution proceedings are conducted by the Librarian under the CARP system in two phases. In a Phase I proceeding, the total cable royalty pool for a given year or years is divided among different categories of copyrighted programming that typically appear on broadcast programming. These categories are movies and syndicated programming, sports programming, devotional or religious programming, musical programming, commercial and noncommercial broadcast programming, and Canadian programming. Once the royalty pool is divided into these categories, the Librarian conducts one or more proceedings at Phase II to resolve disputes within a particular category as to the division of the royalties. Today's royalty distribution determination is a Phase II proceeding in the movie and syndicated programming category (often referred to collectively as the "program supplier" category).

The litigants in this Phase II proceeding in the program supplier category are the Motion Picture Association of America, Inc. ("MPAA"), which represents the majority of copyright owners who filed claims for a distribution of 1997 cable royalties, and the Independent Producers Group ("IPG"), which represents the remaining copyright owners who filed claims for a cable royalty distribution. The Librarian was required to convene a CARP to resolve this Phase II proceeding because MPAA and IPG could not agree as to the division of royalties in the program supplier category.

After a protracted discovery period, the Librarian convened the CARP in this proceeding on October 17, 2000. As provided by section 802(e) of title 17, United States Code, the CARP had six months to hear the evidentiary presentations and arguments of MPAA and IPG and to render a decision. The CARP delivered its initial report to the Librarian on April 16, 2001, awarding IPG 0.5% of the royalty pool and the remainder to MPAA. After review, the Librarian returned the case to the CARP. By Order dated June 5, 2001, the Librarian dismissed all of the claimants comprising IPG's case except for Litton Syndications, Inc. and directed the CARP to adjust its award to IPG and MPAA to account for the dismissal. In addition, the Librarian directed the CARP to articulate the methodology it was using to assign the new distribution percentages and to detail the application of the methodology to the facts before it. *See* Order in Docket No. 2000–2 CARP CD 93–97 (June 5, 2001). The Librarian fully explains his reasoning for rejecting the initial determination of the CARP in this Order.

On June 20, 2001, the CARP returned a new determination. It awarded IPG 0.212% of the royalty funds, with the remaining 99.788% to MPAA. The Librarian permitted IPG and MPAA an additional round of petitions to modify the CARP's determination and replies. The Register now makes her recommendation to the Librarian following her review of the CARP's determination.

Part One—Decisions of the CARP

The Initial CARP Report

The 108-page initial report of the CARP has three essential parts. The first part deals with the validity of the royalty claim filed with the Copyright Office in July 1998 under 17 U.S.C. 111(d)(4) that forms the basis for IPG's participation in this proceeding. The second part addresses and ascribes the proper representation of specific television programs as between MPAA and IPG. The third part of the report resolves the division of the royalties in the program supplier category between MPAA and IPG. The Panel awarded MPAA 99.50% of the royalties and 0.50% to IPG.

1. IPG's Claim

The validity of IPG's claim was hotly contested in this proceeding. The first challenge was raised in the precontroversy discovery period when MPAA moved to dismiss IPG's Phase II case on the grounds that IPG's claim (marked as No. 176 by the Copyright Office) did not comply with the Office's rules and regulations. MPAA asserted that none of the entities listed in exhibit D of IPG's written direct case, which forms the basis of IPG's claim for royalties, appeared on claim No. 176 as required by § 252.2 of the rules. 37 CFR 252.2. According to MPAA, IPG entered into representation agreements with the exhibit D parties after July 31, 1998 (the closing date for filing cable royalty claims with the Office for calendar year 1997), thereby circumventing the requirement of § 252.2 that all claimants to a joint claim be identified on the claim as filed with the Office.

IPG's compliance with § 252.2 was questionable. Stylized as a "joint claim," IPG identified only one claimant—Artists Collection Group ("ACG"). After the Copyright Office questioned the claim in July of 1998, IPG amended the claim to include ACG and Worldwide Subsidy Group ("WSG"). This amendment appeared, on its face, to satisfy the requirements of § 252.2, and the Office did not pursue the matter further. However, when IPG filed a written direct case identifying 16 other parties as claimants, the Library considered MPAA's motion for possible violation of the rule.

In an Order dated June 22, 2000, the Library determined that the prudent course of action was to designate the matter of MPAA's motion to the CARP for further factual findings and final resolution. The Library did this after consideration of IPG's objections to MPAA's motion to dismiss, the language of § 252.2, and the provisions of the Copyright Act related to filing cable royalty claims. The Library rejected IPG's argument that it was acceptable for ACG to file a single claim on behalf of 16 other parties and chastised IPG for not listing the 16 in its joint claim as provided in § 252.2 . However, the Library declined to dismiss IPG's case and designated the MPAA motion to the CARP because:

> [T]he Library cannot say with certainty that all previous claims filed in cable royalty proceedings have listed all joint claimants. It is sometimes the case that the Copyright Office will receive a single claim filed by a production company that does not identify any joint claimants. Whether this production company owns all or some of the copyrights represented by the claim, or is just a representative of unidentified copyright owners, is unknown to the Office. To the Library's knowledge, these claims have not been challenged in the past, and this is a case of first impression. Consequently, the Library is not inclined without prior warning to strictly enforce the requirement that all owners and distributors be identified in a joint claim. However, what is clear, and what the law requires, is a factual determination as to which of the owners and distributors identified by IPG in exhibit D of its written

direct case were in fact represented by Worldwide Subsidy Group [1] at the close of the filing period for 1997 cable claims. Any party listed in exhibit D (with the exception of Lacey Entertainment, which filed its own claim) that was not represented by Worldwide Subsidy Group before August 1998 cannot be said to have filed a timely claim, and therefore testimony contained in IPG's written direct case regarding such party must be stricken.

Order in Docket No. 2000–2 CARP CD 93–97 at 7 (June 22, 2000). The Library directed the CARP to make factual determinations as to whether there existed written agreements between WSG and each of the exhibit D claimants dated on or before July 31, 1998, the close of the cable royalty claim filing period. IPG submitted, as directed by the Library, copies of the representation agreements between WSG and the exhibit D claimants, along with additional corroborating documents to prove the existence of a representation arrangement on or before July 31, 1998.[2]

Upon its convocation, the CARP turned to the task of examining the representation agreements and supporting documents to determine which, if any, of IPG's exhibit D claimants would be allowed to remain in the proceeding. The representation agreements are standard form contracts for representation by WSG in collecting (among other things) cable compulsory license royalties. The contract is effective upon the date identified in the lead paragraph of the contract, which provides that "as of (date)," WSG and the identified party have entered into the agreement. With only two exceptions, none of the signature pages in the representation agreements bore a date indicating when the agreement was signed and executed. Some of the additional documents provided by IPG (copies of letters and faxes) provided context to some of the representation agreements to indicate the time period in which they were signed and executed.

In its report, the CARP examined the documents for each of the exhibit D claimants and decided which claimants had a signed agreement with WSG on or before July 31, 1998, and which did not. The CARP determined that a valid representation agreement existed for the following: Abrams/Gentile Entertainment; Raycom Sports; Flying Tomato Films; Funimation Productions; Golden Films Finance Corporation IV and American Film Investment Corporation II; Litton Syndications, Inc.; Sandra Carter Productions; and The Tide Group d/b/a Psychic Readers Network. The CARP found that while there may have existed a valid representation agreement between WSG and Mendelson/PAWS, WSG's claim of representation was trumped by General Mills, a claimant ascribed to MPAA's claim. The CARP dismissed the United Negro College Fund from IPG's case because it determined that a representation agreement did not exist until sometime in November of 1998, well after the July 31, 1998, deadline.

2. IPG's Programs

As provided in the section 111 cable license, copyrighted works that are retransmitted by cable systems on a distant basis are entitled to royalties collected from cable systems. In the program supplier category, which is the subject of this proceeding, these works are movies and syndicated television programs.

After resolving the matter of which IPG claimants remained in the proceeding, the CARP turned to the task of determining which of the programs claimed by IPG claimants were entitled to a royalty distribution.[3] Some programs were claimed by both IPG and MPAA. The following is a summary of the programs that the CARP credited to IPG's claimants.

a. *Abrams/Gentile Entertainment.* The CARP awarded all five programs claimed by IPG—*Dragon Flyz; Happy Ness, Secret of the Loch; Jelly Bean Jungle; Sky Dancers*; and *Van Pires*—to IPG. MPAA asserted that *Jelly Bean Jungle* belonged to Audio Visual Copyright Society d/b/a Screenrights, rather than Abrams/Gentile, but the CARP determined that "Audio Visual Copyright Society's own 1997 [program] Certification [did] not list such program in its claim." CARP Report at 53.

b. *Raycom Sports.* The CARP awarded all four programs claimed by IPG—*Elvis, His Life and Times; Journey of the African American Athlete; More Than a Game; Our Holiday Memories*—to IPG, finding that the MPAA did not contest any of these titles. CARP Report at 53–54.

c. *Flying Tomato Films.* The CARP did not credit the one program, *Just Imagine*, to Flying Tomato Films, because it determined that Litton Syndications held the syndication rights to the program. CARP Report at 54–55.

d. *Funimation Productions.* The CARP identified only one program belonging to Funimation Productions: *Dragon Ball Z.* The CARP determined that Fox Family Worldwide, not Funimation Productions, was the proper syndicator for *Dragon Ball Z*, and therefore IPG was not entitled to a distribution for this program. CARP Report at 55–56.

e. *Golden Films Finance Corporation IV and American Film Investment Corporation II.* Two programs were claimed by IPG for these companies: *Enchanted Tales* and *Thumbelina.* The CARP determined that *Enchanted Tales* is a series of videos, one of which is *Thumbelina*, and that the syndication rights to these programs belong to Eyemark Entertainment and Summit Media, not Golden Films and American Films. CARP Report at 58. Further, the CARP determined that both *Enchanted Tales* and *Thumbelina* were not retransmitted by cable systems during 1997. *Id.* Consequently, the CARP did not give credit to IPG for these programs.

f. *Litton Syndications, Inc.* IPG identified thirteen programs belonging to Litton in its written direct case: *Algo's Factory; Jack Hanna's Animal Adventures; Dramatic Moments in Black Sports History; Dream Big; Harvey Penick's Golf Lessons; Shaka Zulu; Story of a People; Moin USA; Nprint; Critter Gitters; Sophisticated Gents; The Sports Bar*; and *Bloopy's Buddies.* The CARP eliminated *Shaka Zulu* and *Story of a People* from IPG's claim, finding that syndication rights to *Shaka Zulu* were properly held by Harmony Gold USA, not Litton, and that the proper syndicator for *Story of a People* was unknown. CARP Report at 60–61. The CARP also eliminated *Dream Big*, determining that Warner Brothers, not Litton, was the syndicator of that program. *Id.* at 62. Although both IPG and MPAA claimed *Dramatic Moments in Black Sports History*, the CARP determined that Litton was indeed the syndicator and credited IPG's claim with this program. *Id.* The remaining programs were credited to IPG.

g. *Mendelson/PAWS.* The single program claimed by Mendelson/PAWS, *Garfield and Friends*, was claimed by both MPAA and IPG. MPAA supplied documentary evidence from General Mills indicating that it was the syndicator of *Garfield and Friends*, even though Mendelson/PAWS produced the program. The CARP did not credit IPG with *Garfield and Friends*, determining that Mendelson/ PAWS resolved the

[1] IPG by this time had informed the Library that ACG had withdrawn its claim and that WSG was the sole claimant remaining for claim No. 176

[2] The Library amended its regulations after the June 22, 2000 Order to prevent future confusion as to the filing of single and joint claims. *See* 66 FR 29700 (June 1, 2001).

[3] Because all remaining monies in the 1997 program supplier category automatically belonged to MPAA's claimants once IPG's claim was determined, the CARP focused its attention only on IPG's programs.

dispute by removing its claim. CARP Report at 64–65.

h. *Sandra Carter Productions.* IPG identified five programs belonging to Sandra Carter: *Bottom Line; By River, By Rail; Flex; Parenting in the 90's; Til Earth and Heaven Ring.* MPAA asserted that *Parenting in the 90s* belonged to Audio Visual Copyright Society d/b/a/ Screenrights, but the CARP determined that Screenrights did not list that program in their certification to MPAA and credited it to IPG. CARP Report at 66. The CARP determined that *Bottom Line; By River, By Rail*; and *Til Earth and Heaven Ring* appeared on television station WBAL-TV, Baltimore, Maryland, and was not subject to a distant retransmission by a cable system. These programs were removed from IPG's claim. *Id.* at 66–67. Finally, the CARP credited *Flex* to IPG.

i. *The Tide Group d/b/a Psychic Readers Network.* IPG claimed several programs for the Tide Group that had multiple titles. The CARP credited IPG with *Alcatraz* as one program, *Kenny Kingston* as one program, and *Psychic Readers* (with its alternate title *Psychic Readers Network*) as one program. CARP Report at 68.

j. *United Negro College Fund.* IPG claimed one program for the United Negro College Fund: *Lou Rawls Parade of Stars.* However, the CARP determined that the United Negro College Fund did not have a valid representation agreement with WSG by July 31, 1998. Consequently, IPG did not receive credit for *Lou Rawls Parade of Stars.* CARP Report at 69–70.

k. *Lacey Entertainment.* Both MPAA and IPG claimed credit for Lacey Entertainment's two programs: *America's Dumbest Criminals* and *Mega Man.* The CARP found that Lacey confirmed that MPAA was its representative for section 111 royalties for *Mega Man* and that Lacey was not the U.S. distributor for *America's Dumbest Criminals.* Consequently, the CARP did not credit IPG with these programs. CARP Report at 71–72.

3. The Distribution Percentages

The third part of the CARP's report, which awards IPG 0.5% of the royalties and MPAA 99.5%, is the most troubling portion. After leveling a number of criticisms at both MPAA's and IPG's proposed distribution methodologies, the CARP failed to articulate the method it settled upon in assigning the 0.5% and 99.5% awards.

Both MPAA and IPG proposed detailed methodologies for determining the royalty awards in this proceeding. MPAA's methodology is based upon viewership analysis of movies and syndicated television programs retransmitted by cable systems in 1997 on a distant signal basis. The underlying premise of the MPAA formula is that actual viewing of movies and syndicated television programs by cable subscribers is the best way to determine the marketplace value of the programming. The source elements for determining actual viewership are: (1) TVData station logs, which show the programs broadcast by the stations and the date and time of their broadcast, for the 82 television stations used by MPAA in its sample survey; (2) a special study of the same 82 stations for the sweeps period conducted by Nielsen Media Research; (3) program ownership data (i.e. which claimants to the 1997 cable royalties own which programs) as contained in the Cable Data Corporation ("CDC") database; and (4) the weighting factors used by CDC to interpolate viewing for non-sweeps months when data from Nielsen is not available. CARP Report at 81.

The CARP described the details of MPAA's distribution methodology as follows:

> MPAA selects 82 of the most heavily carried stations retransmitted as a distant signal by Form 3 system operators. Form 3 systems subscribers comprise the largest group of cable subscribers—89% and their gross receipts represent the largest portion—96.5%—of the 1997 cable royalty fund.
>
> The program schedules of these stations are acquired from TVData. The program information is matched to viewing data provided by Nielsen Media Research ("Nielsen"). In particular, Nielsen provides the number of quarter hour segments (QH) each program aired on the station and the average number of cable subscribers who viewed each program on that station on a distant basis.
>
> For each station in the MPAA sample, Nielsen goes into the diary database of approximately 150,000 homes for each sweep, eliminates diaries in local area of the station (as supplied by MPAA), sums the weights by quarter hour for each diary and generates estimated projections on quarter-hour-by-quarter-hour basis.
>
> MPAA then calculates the household viewing hours (HHVH) for each series and motion picture in the study. Household viewing hours for every program (claimed and unclaimed) is [sic] calculated for each program using the Nielsen data and interpolated audience data for non-sweeps periods.
>
> After reconciling programs with broadcast times, MPAA then calculates the household viewing hours (HHVH) for each series and motion picture in the study using the Nielsen data and interpolated audience data.
>
> The HHVH formula is: (ΣQH/4) x DCHH = HHVH. The formula may be stated as follows: Add the total number of QH segments a program is broadcast in a particular time slot on a particular station. The sum is divided by four to get an hourly measure. The result is multiplied by the average number of distant cable households (DCHH) that actually watched the program on that station during the time period.

CARP Report at 81–82 (footnotes omitted). Applying MPAA's formula to the 1997 data yields, according to MPAA, a determination that programming represented by MPAA received 99.9292% of the total distant viewing—3,474,810,364 viewing hours out of 3,477,272,694 total viewing hours. MPAA therefore asked for 99.9292% of the 1997 cable royalties. MPAA Findings of Fact at 20, ¶ 55.

IPG proposed a different distribution methodology which yields a greater distribution percentage to IPG. Instead of focusing on viewership as the main valuation method, IPG's methodology operates from the premise that it is best to look at the availability of programming offered to subscribers and the benefits received by the cable operators who retransmit that programming. IPG submits that while the decision of a television station to transmit a particular program is driven by a desire for viewership ratings, cable systems are not concerned with viewership of a particular program, but rather are concerned with attracting and holding the greatest number of subscribers by offering multiple programming choices. IPG attempts to place a value on each and every broadcast using the following data: (1) The number of distant cable subscribers capable of receiving the program broadcast during 1997; (2) the distant retransmission royalties generated during 1997 that are attributable to stations broadcasting a particular program; (3) the time placement of the broadcast; and (4) the length of the particular broadcast. CARP Report at 95.

The CARP described IPG's distribution methodology as follows:

> IPG expanded MPAA's station sample to 99 television stations, including only those with a combined percentage of distant cable subscribers and "fees gen." (fees generated) significantly greater than the original selection. The added stations were heavily retransmitted according to distant subscribership data for Form 1, Form 2, and Form 3 cable systems.
>
> IPG secured data from TVData reflecting all programs broadcast on the 99 Sample Stations, 24 hours a day, for the entire year of 1997 and segregated programming compensable in the syndicated programming category.
>
> IPG accorded a "Station Weight Factor" to each and every compensable broadcast blending of (i) the average percentage of distant cable subscribers capable of viewing the station of broadcast and (ii) the average percentage of "fees gen." attributable to the station of broadcast, as compared to the other 99 Sample Stations.

IPG then accorded a "Time Period Weight Factor" based on the time period or daypart of the program broadcast, weighted according to data derived from the "1998 Report on Television" published by Nielsen Media Research, and factored in the length of each such broadcast.

CARP Report at 96 (footnotes omitted; parenthetical not in original). Applying IPG's methodology to its data yields, according to IPG, a determination that 0.881% of the aggregate Sum Weighted Value of all programs claimed in this proceeding belongs to IPG. IPG Findings of Fact at 16–17, ¶ 51.

Both MPAA and IPG leveled criticisms at each other's methodologies, and the CARP details those criticisms. *See* CARP Report at 82–94 (IPG); 97–102 (MPAA). The CARP accepted the following criticisms of MPAA's approach:

—MPAA's direct testimony did not sufficiently lay the foundation for the survey or explain its results.
—The Panel was forced to call its own witnesses, Mr. Lindstrom from Nielsen, and Mr. Larson from Cable Data Corporation to explain their methods of data acquisition and reporting.
—The number of sampled stations [in MPAA's station survey] has declined without adequate explanation.
—Station selection criteria was excluded Form 1 and Form 2 cable systems.
—The number of "zero" viewing hours shows the flaw in attempting to use the Nielsen data as a proxy for the retransmission market especially since Nielsen had 24 hour sampling capability in 1997.
—There are unanswered technical questions regarding relative error rates and mixing diary and meter data.
—The method of interpolation of non-sweep month estimated viewing needs statistical validation.
—There is an overvaluation of WTBS and under-valuation of the other Superstations in the survey.

Id. at 102–103.

The CARP found the following criticisms of IPG's methodology:

—A mathematically sound basis for the creation and application of the station weight factor and time period weight factor should have been presented by a statistician.
—Daypart data was misapplied thus overstating "all other" viewing.
—It doesn't directly address the marketplace value of the works transmitted, a primary criteria.

Id. at 103.

After stating that it was "recogniz[ing] the strengths and weaknesses" of MPAA's and IPG's approaches, the Panel proceeded to summarily award IPG 0.5% of the 1997 cable fund and the remaining 99.5% to MPAA. The CARP did observe that "certain "claimants" had not satisfied the criteria for asserting their claims and certain programs were not qualified. The Panel did not award any royalty allocation for such unqualified "claimants" nor did it award any royalty allocation for unqualified programs." *Id.* at 106.

Standard of Review

Section 802(f) of the Copyright Act directs that, upon the recommendation of the Register of Copyrights, the Librarian shall adopt the report of the CARP "unless the Librarian finds that the determination is arbitrary or contrary to the applicable provisions of this title." The narrow scope of review has been discussed in great detail in prior decisions which have concluded that the use of the term "arbitrary" in this provision is no different than the "arbitrary" standard described in the Administrative Procedure Act, 5 U.S.C. 706(2)(A). *See* 63 FR 49823 (September 18, 1998); 63 FR 25394 (May 8, 1998); 62 FR 55742 (October 28, 1997); 62 FR 6558 (February 12, 1997); 61 FR 55653 (October 28, 1996). Thus, the standard of review adopted by the Librarian is narrow and provides that the Librarian will not reject the determination of a CARP unless its decision falls outside the "zone of reasonableness" that had been used by the courts to review decisions of the Copyright Royalty Tribunal ("CRT"). *See National Cable Television Ass'n.* v. *Copyright Royalty Tribunal,* 724 F.2d 176, 182 (D.C. Cir. 1983). Moreover, based on a determination by the Register and the Librarian that the Panel's decision is neither arbitrary nor contrary to law, the Librarian will adopt the CARP's determination even if the Register and the Librarian would have reached conclusions different from the conclusions reached by the CARP.

The U.S. Court of Appeals for the District of Columbia Circuit has stated, however, that the Librarian would act arbitrarily if "without explanation or adjustment, he adopted an award proposed by the Panel that was not supported by any evidence or that was based on evidence which could not reasonably be interpreted to support the award." *See National Ass'n of Broadcasters* v. *Librarian of Congress,* 146 F.3d 907, 923 (D.C. Cir. 1998).

For this reason, the Panel must provide a detailed rational analysis of its decision, setting forth specific findings of fact and conclusions of law. *See National Cable Television Ass'n.* v. *Copyright Royalty Tribunal,* 689 F.2d 1077, 1091 (D.C. Cir. 1992) (requiring CRT to weigh all relevant considerations and set out its conclusions in a form that permits the court to determine whether it has exercised its responsibilities lawfully).

It is then the task of the Register of Copyrights to review the Panel's report and make her recommendation to the Librarian as to whether it is arbitrary or contrary to the provisions of the Copyright Act and, if so, whether and in what manner the Librarian should substitute his own determination.

Remand to the CARP

After receiving the CARP's initial determination, the Register of Copyrights recommended, and the Librarian accepted, that the Report be rejected and remanded to the CARP for further consideration. It was apparent from reviewing the Report that the CARP had acted arbitrarily in three instances: (1) The CARP misapprehended the intent of the June 22, 2000, Order designating consideration of the circumstances of IPG's representation agreements with its exhibit D claimants; (2) the CARP awarded programs to an IPG claimant when there was no introduction of evidence as to the value of the program and assigned another program to IPG without adequate explanation of its decision; and (3) the CARP failed to articulate the reasoning it used in arriving at a distribution percentage of 0.5% for IPG and 99.5% for MPAA. *See* Order, Docket No. 2000–2 CARP CD 93–97 (June 5, 2001).

1. Dismissal of Additional IPG Claimants

As discussed above, the status of IPG's claim No. 176 has been a focal point of this proceeding. MPAA has moved to dismiss IPG's entire claim no less than three times, claiming that claim No. 176 flouts the Copyright Office's rules and the statute, and is a fraud on the Library. The CARP appears to agree with MPAA's contentions, but stops short of dismissing most if not all of IPG's exhibit D claimants, noting that it "is attempting to accommodate the Copyright Office's previously created, one-time exception to the strict enforcement of the Copyright Office's claim filing rules, while aspiring to achieve fairness for all affected claimants." CARP Report at 42.

The Register concludes that the CARP did not follow the direction and intent of the June 22, 2000, Order directing it to consider the status of IPG's representation of the exhibit D

claimants. The rule and intent of that Order are as follows.

Section 111(d)(3) of the Copyright Act states that royalties collected from cable systems under the cable statutory license may only be distributed to copyright owners "who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period." 17 U.S.C. 111(d)(3). This means that it is copyright owners—individuals or entities that own one or more of the exclusive rights granted by section 106 of the Copyright Act—that are entitled to royalty fees, not those who represent them in CARP proceedings. The statute also provides that royalty fees may only be distributed to "claimants" that file a claim with the Copyright Office during the month of July for royalties collected in the previous calendar year. 17 U.S.C. 111(d)(4)(A). Further, the statute states that claims filed with the Copyright Office shall be submitted "in accordance with requirements that the Librarian of Congress shall prescribe by regulation." *Id.*

The Librarian adopted such regulations, which are found at part 252 of 37 CFR. Section 252.3 of the rules prescribes the content of a cable claim, distinguishing between "individual claims" and "joint claims." An "individual claim" involves royalties that are being sought by a single "claimant," whereas a "joint claim" involves two or more "claimants." The requirements for an "individual claim" are "a general statement of the nature of the claimant's copyrighted works and identification of at least one secondary transmission by a cable system of such works establishing a basis for the claim." 37 CFR 252.3(a)(4). "Joint claims" have an additional requirement. If the claim is a "joint claim," there must be "a concise statement of the authorization for the filing of the joint claim, and the name of each claimant to the joint claim." 37 CFR 252.3(a)(3). Additionally, the "joint claim" must have "a general statement of the nature of the joint claimants" copyrighted works and identification of at least one secondary transmission of one of the joint claimants' copyrighted works by a cable system establishing a basis for the joint claim." 37 CFR 252.3(a)(4).[4]

The June 22, 2000, Order recounts the history of § 252.3, and it will not be repeated here. *See* June 22 Order at 2–5. The importance about § 252.3 in the context of this proceeding is that it uses the word "claimant" in the text, as opposed to the terms "copyright owner" or "holder of one or more of the exclusive rights granted by section 106 of the Copyright Act." IPG argued to the Library in response to MPAA's initial motion to dismiss its claim that it was acceptable for Artists Collection Group ("ACG") to file an individual claim, even though it represented several copyright owners, because it was the only "claimant" submitting a claim. June 22 Order at 5. If § 252.3 had used the term "copyright owner" instead of "claimant," then this clearly would not be a permissible interpretation of the rule. The Library disagreed with IPG's interpretation of § 252.3, concluding instead that what ACG had filed was in reality a joint claim, because it was representing only a group of copyright owners who would ultimately be entitled, under 17 U.S.C. 111(d)(3), to the royalties. *Id.* at 6. However, ACG did not list the exhibit D claimants it represented on the claim, as required by § 252.3(a)(3) for joint claims, other than to list Worldwide Subsidy Group ("WSG") which, as was revealed in the proceedings before the CARP, was nothing more than an unregistered, fictitious business name for ACG. CARP Report at 35. The Library did not take the harsh step of dismissing IPG's claim for ACG's failure to list the exhibit D claimants on claim No. 176. Instead, the Library made a one-time exception to the requirement by affording IPG the opportunity to prove that ACG/WSG had entered into valid written representation agreements with each of the exhibit D claimants on or before July 31, 1998, the last day for filing claims to 1997 cable royalties. The Library did this because it could not

> say with certainty that all previous claims filed in cable royalty proceedings have listed all joint claimants. It is sometimes the case that the Copyright Office will receive a single claim filed by a production company that does not identify any joint claimants. Whether this production company owns all or some of the copyrights represented by the claim, or is just a representative of unidentified copyright owners, is unknown to the Office. To the Library's knowledge, these claims have not been challenged in the past, and this is a case of first impression. Consequently, the Library is not inclined without prior warning to strictly enforce the requirement that all owners and distributors be identified in a joint claim.

June 22 Order at 7.

In designating to the CARP for factual determination the status of ACG/WSG as representatives of the exhibit D claimants, the Library offered some decisional guidelines:

> First, because Worldwide Subsidy Group did not list any joint claimants, IPG has the burden of proving that it represented each of the exhibit D parties for distribution of 1997 cable royalties on or before July 31, 1998. Second, IPG must submit written proof of representation for each exhibit D party. Written proof is required because claim No. 176 does not identify any of the exhibit D parties, and because testimonial evidence alone will not preserve the integrity of the law and the regulations which prohibit adding parties to a joint claim after the fact. Proof must be in the form of written agreements of representation between IPG and each of the exhibit D parties executed on or before July 31, 1998. Finally, if the CARP determines that one or more of the exhibit D parties were not validly represented by Worldwide Subsidy Group for distribution of 1997 cable royalties on or before July 31, 1998, the CARP must strike that portion of IPG's written direct case related to that party or parties.

June 22 Order at 7

After issuance of the June 22 Order, IPG petitioned the Library for reconsideration, asserting that it had written material in addition to the standard form contract entered into between WSG and the exhibit D claimants that clarified that a representational arrangement existed on or before July 31, 1998. The Library clarified that the "June 22 Order's requirement that proof of representation "must be in the form of written agreements" does not mean that IPG's standard representational agreement form is the only acceptable document that proves timely representation." Order in Docket No. 2002–2 CARP CD 93–97 at 4 (September 22, 2000). The Library allowed IPG to submit additional documentation, but did not permit the introduction of testimonial evidence. IPG submitted the additional documents, which consisted of letters and faxes discussing the representational contracts submitted earlier by IPG, on October 10, 2000 (these documents are hereinafter referred to as the "October 10 documents").

The Library has reviewed the representational contracts and the October 10 documents for all sixteen of the exhibit D claimants. Several things are evident from this examination. First, with the exception of two of the contracts, they do not contain any dates of execution of the signature page.[5] Rather, the contract bears a provision, in the lead paragraph, that it is effective "as of" a certain date. In all instances this date is on or before July 31, 1998. Second, it is apparent from the October 10 documents that the "as of" date in the contract is not the date of execution

[4] See footnote 2, *supra*.

[5] The contract with Jay Ward Productions was dated "11/02/99." IPG, however, voluntarily withdrew Jay Ward Productions from its case. Likewise, Mainframe Entertainment's contract was dated October 8, 1998, and IPG also withdrew Mainframe from its case.

of the contract. Rather, it was the practice of WSG to send a copy of its contract to a potential client during negotiations for representation and type in the "as of" date at that time. The contract may not have been signed and executed for weeks, or even months, after the "as of" date. Third, there are not October 10 documents for all of the exhibit D parties. For some, the only document evidencing representation is the contract itself bearing the "as of" date.

In each instance, with the exception of the United Negro College Fund, the CARP accepted the "as of" date on the representational contracts as evidence that a representational agreement existed on that date. The Register determines that that decision is arbitrary because it runs contrary to the evidence presented to the CARP. The Register also determines that the Panel's decision on this point countervails the June 22 Order. Pursuant to the terms of that Order, the burden was squarely on IPG to demonstrate through documentary evidence that a valid representational arrangement existed on or before July 31, 1998. The "as of" date is not evidence of such an arrangement, because it is clear from the October 10 documents that the contracts were signed sometime after the "as of" date. In those circumstances where there is documentary evidence that the contract was signed on or before July 31, 1998, IPG has met its burden of proving a representational arrangement.

For Raycom Sports, Abrams/Gentile Entertainment, Funimation Productions, and Sandra Carter Productions, the only documents supplied by IPG are the representational contracts. Because the "as of" dates on these contracts do not prove the dates of their execution, it cannot be determined whether they were signed, and a valid representational arrangement existed, on or before July 31, 1998. Consequently, these parties are dismissed from this proceeding.

There are October 10 documents for The Tide Group d/b/a Psychic Readers Network, but they do not prove that the representational contract had been signed or that a valid representational arrangement had been reached on or before July 31, 1998. Consequently, this party is dismissed.

The CARP dismissed the United Negro College Fund because the October 10 documents suggested that the representational contract was not signed on or before July 31, 1998. The contract bears no date on the signature page, and an "as of" date of July 30, 1998, is handwritten in the first paragraph. There are October 10 documents discussing entering into a representational agreement in November of 1998, which led the CARP to conclude that a representational arrangement did not exist as of July 30, 1998. IPG has not met its burden of demonstrating that a representational arrangement existed on or before July 31, 1998. Consequently, the Register accepts the CARP's determination to dismiss the United Negro College Fund.

The only exhibit D party for which IPG has met its burden is Litton Syndications.[6] While there is no date of execution on the Litton/WSG contract, there is a June 16, 1998, letter from Peter Sniderman of Litton to Raul Galaz of WSG stating that "enclosed are four copies of the executed Litton Syndications, Inc.—Worldwide Subsidy Group agreement." In addition, there is a June 18, 1998, letter from Galaz to Sniderman stating that "enclosed herein please find two (2) fully executed originals of the above-referenced agreement." It is clear from these documents that a valid representational arrangement existed between Litton and WSG prior to July 31, 1998. IPG has therefore met its burden as provided in the June 22 Order.

2. The Status of ACG, WSG and IPG

After the extended discussion and analysis of claim No. 176 in the June 22 Order and above, one might believe that the validity of claim No. 176 is definitively resolved. This is not so, because of issues surrounding the names—ACG and WSG—that appeared on the claim. The Library must therefore resolve whether claim No. 176 was a deliberately perpetrated fraud on the Copyright Office and the section 111 filing system.

The CARP Report devotes a considerable amount of discussion to the identity and status of ACG, WSG, and IPG. It is a complicated discussion. When claim No. 176 was originally filed with the Copyright Office on July 11, 1998, it listed ACG as the sole claimant. ACG was incorporated in May of 1998 in the state of California by Raul Galaz, its principal, for the apparent purpose of representing claimants before the Library for cable and satellite television royalties. Although ACG was the only claimant on claim No. 176, the claim stated that it was a joint claim being filed on behalf of ACG and "on behalf of others." Claim No. 176. Mr. Galaz signed the claim. When Mr. Galaz was informed by the Copyright Office that in order for claim No. 176 to be a joint claim it must identify at least one other claimant, he amended claim No. 176 to include WSG. At that time, WSG was nothing more than an unregistered, fictitious business name for ACG. The following year, Mr. Galaz moved from California to Texas, whereupon he filed articles of incorporation for WSG in Texas. Before leaving California, Mr. Galaz also registered the name WSG in California as a fictitious business name for WSG.

Once in Texas, Mr. Galaz took steps in 2000 to dissolve ACG by filing articles of dissolution in California for ACG. This left WSG as a Texas corporation. Mr. Galaz then adopted an unregistered, fictitious business name for WSG in Texas: IPG. When MPAA moved to dismiss claim No. 176 in June of 2000, IPG informed the Library in a footnote of its opposition to the motion that ACG had voluntarily withdrawn its claim from the proceeding, leaving WSG Texas/IPG as the sole claimant in this proceeding.

The first question is whether these various changes in identity were an attempt to perpetrate a fraud on the Copyright Office by hiding from the Office the real claimants in this proceeding. In other words, did IPG deliberately refrain from listing its exhibit D claimants in claim No. 176 (Litton, Flying Tomato Films, et al.) because it was hiding something from the Office? Assuming that listing only ACG and WSG (California) on claim No. 176 was not an honest mistake, as IPG vigorously claims that it was, the only reason the Library can divine for not listing the exhibit D claimants was that ACG/WSG did not then represent some or all of those claimants or, in the alternative, ACG/WSG did not want to preclude the possibility of signing up additional claimants after the July 31, 1998, deadline.

Whether or not this was ACG/WSG's true motivation is unknown, although the CARP at least suggests a sinister element in Mr. Galaz's actions. CARP Report at 42. In any event, the Register believes that the Library has satisfactorily dealt with the status of IPG's representation of the exhibit D claimants in the June 22, 2000, Order and the above discussion. It is apparent that WSG—i.e., Mr. Galaz—had a valid

[6] The remainder of the exhibit D parties have been either withdrawn from the preceeding, or their programs have been credited to another. The programs of Beacon Communications Corp., Cosgrove-Meurer Productions, Jay Ward Productions, Mainframe Entertainment, and Scholastic Entertainment were withdrawn by IPG. Flying Tomato Films' program was credited to Litton. CARP Report at 55. Mendelson/PAWS, Inc.'s programs were credited to MPAA. *Id.* at 64. The CARP determined that Golden Films Finance Corporation IV and American Film Corporation II were not entitled to a distribution because their programs were not retransmitted by a cable system on a distant basis. *Id.* at 58. Lacey Entertainment's programs were credited to MPAA. *Id.* at 71–72.

representation arrangement with Litton Syndications in July of 1998 before the close of the cable claim filing period. The Library need not make any determination as to whether Litton's agreement was with ACG/WSG California, WSG Texas, or IPG. Any attempt to do so would necessarily involve questions of state law with respect to the effect of incorporation of a company and use of fictitious business names. Such determinations are beyond the jurisdiction of the Library and are unnecessary in this proceeding. Mr. Galaz/WSG had a valid representation agreement with Litton in July of 1998, and Litton affirms this relationship by allowing IPG to represent it in this proceeding. Because the Library has agreed—this one time[7]—that it was acceptable that Litton did not appear on claim No. 176, *supra*, Litton has a valid claim in this proceeding.

The second question surrounds ACG's voluntary withdrawal from this proceeding. MPAA contends that when ACG withdrew its claim that left only WSG California on claim No. 176, and WSG California was nothing more than a fictitious business name for ACG. MPAA Petition to Modify CARP Report at 33. Litton's representation agreement is with WSG Texas, which is not a claimant in this proceeding, and therefore claim No. 176 must be dismissed. IPG responds that it was counsel's mistake to inform the Library that ACG had withdrawn its claim and that such mistake should be discounted because it appeared in a footnote to an opposition to MPAA's motion to dismiss. IPG Reply to MPAA Petition to Modify CARP Report at 27–29.

Once again, the legal status of ACG, WSG California, WSG Texas, and IPG involve questions of state law beyond the jurisdiction of the Library. While it is true that IPG did state that the claims of ACG were withdrawn, it is illogical to assume that IPG was effectively ending its case by rendering claim No. 176 void. Rather, it is apparent that IPG believed that it held all rights of ACG when it sought to dissolve ACG in California, particularly since Mr. Galaz was the principal for both organizations. It would work a serious injustice to deny Litton royalties based upon a determination that Mr. Galaz made a technical error in assuming that all rights of ACG were held by IPG before ACG withdrew from the proceeding. Indeed, while IPG stated that it was withdrawing ACG's claim, the Library did not enter any order to that effect, leaving the status of ACG in this proceeding unresolved. Certainly, the actions of Mr. Galaz are not to be condoned and should serve as a warning to future claimants to make sure that proper transfers of rights between corporations are effected prior to seeking dismissal or dissolution of a claimant. However, the Library has determined that a valid representation arrangement existed for Litton and that, in this instance, it is appropriate that Litton's claim be allowed to go forward.

Finally, there is the question of the programs listed on claim No. 176. Section 252.3(d)(4) requires that for joint claims there must be an "identification of at least one secondary transmission of one of the joint claimants' copyrighted works by a cable system establishing a basis for the joint claim." 37 CFR 252.3(a)(4). ACG listed two programs on claim No. 176, *Unsolved Mysteries* and *Garfield and Friends*, neither of which was ultimately credited to IPG. *Unsolved Mysteries* was dropped from IPG's case because it was determined that it was a network program not eligible for section 111 cable royalties. Both IPG and MPAA claimed *Garfield and Friends*, and the CARP ultimately determined that it was properly credited to MPAA. This means that ACG did not identify a secondary transmission on claim No. 176 that belonged to one or more of its joint claimants.

The purpose of requiring identification of at least one secondary transmission by a cable system is to permit the Copyright Office to determine if the claim is facially valid. In other words, if a claimant lists a network program, or a program that was not retransmitted in the calendar year for which royalties are sought, the Office can take immediate action either to request further information, or to dismiss the claim. The Office has contemplated amending its rules to require claimants to identify all the programs that comprise their claim, but is aware that there is considerable opposition among copyright claimants to adopting such a requirement. If the program listed on a claim appears facially valid, the Office does not attempt to resolve its ownership status and the claim is allowed to go forward. In this case, it is apparent that IPG had a colorable claim to *Garfield and Friends*, believing that it had a valid representation agreement with Mendelson/PAWS, the producer of the *Garfield* programs. The CARP determined, however, that MPAA had a stronger claim, ruling that General Mills held the syndication rights to the programs. Consequently, this is not a case where IPG had no realistic claim to *Garfield and Friends*.[8]

Given the dispute over ownership rights of *Garfield and Friends*, the Register determines that it would be unjust to invalidate all of the claims covered by claim No. 176 because it was ultimately determined that MPAA held the superior claim to the program. Were we to rule the other way, it would make § 252.3(a)(4) a trap for unwary joint claimants. Since the rule requires identification of only one secondary transmission, hundreds of joint claims could potentially be invalidated if a single program is identified that, after litigation before a CARP, is determined to have a superior claimant. There is also the question of what might happen if the joint claimant with the single identified program withdraws its claim or changes representation in the proceeding. Such gamesmanship could potentially wipe out many otherwise valid claims from the proceeding. Because IPG had a colorable claim to *Garfield and Friends* at the start of this proceeding, it would be unjust to invalidate claim No. 176 because the program was ultimately awarded to MPAA.

In sum, the Register concludes that claim No. 176 is sufficiently valid to allow the claim of Litton, as described below, to go forward in this proceeding and receive a distribution of royalties.

3. Programs Credited to Litton

During proceedings before the CARP, IPG claimed thirteen programs for Litton: *Algo's Factory; Jack Hanna's Animal Adventures; Dramatic Moments in Black Sports History; Dream Big; Harvey Penick's Private Golf Lessons; MomUSA; Nprint; Critter Gitters; Shaka Zulu; Sophisticated Gents; The Sports Bar, Bloopy's Buddies* and *Story of a People*. The CARP did not credit IPG with *Shaka Zulu*, finding that the program properly belonged to Harmony Gold USA, and determined that *Story of a People* was an unclaimed program. The CARP also did not credit IPG with *Dream Big*, determining that it was properly claimed by Warner Bros. as the syndicator of the program. The remaining programs were credited to IPG.

In its petition to modify the initial decision of the CARP, MPAA challenges

[7] See footnote 2, *supra*.

[8] The same cannot be said for *Unsolved Mysteries*. *Unsolved Mysteries* is a network program which can never be eligible for section 111 royalties. *See* 17 U.S.C. 111(d)(3)(A) (only nonnetwork programs are eligible for distributions). ACG should have known that *Unsolved Mysteries* failed to satisfy the requirements of 37 CFR 252.3(a)(4). If this had been the only program that ACG listed in claim No. 176, there would be solid grounds for dismissal of the claim.

the CARP's determination to credit Litton with *Dramatic Moments in Black Sports History, Critter Gitters,* and *Bloopy's Buddies.* The CARP credited *Critter Gitters* and *Bloopy's Buddies* to Litton because these programs appeared on Litton's representation agreement with WSG. CARP Report at 59. Both MPAA and IPG claimed *Dramatic Moments in Black Sports History.* After allowing evidentiary supplements to IPG's and MPAA's claim on this program, the CARP stated that "[i]n view of the entire supplemented record, therefore, the CARP finds that *Dramatic Moments in Black Sports History* is represented under the IPG rather than the MPAA claim." *Id.* at 61–62.

With respect to *Critter Gitters* and *Bloopy's Buddies,* MPAA asserts that "IPG made no claim for either program" and "presented no evidence of their value." MPAA Petition to Modify CARP Report at 44. Further, MPAA asserts that the CARP "cites no evidence that either program was broadcast in the United States." *Id.* With respect to *Dramatic Moments in Black Sports History,* MPAA argues that:

> The program is listed in MPAA's list of claimed programs. The claimant—New Line Cinema Corporation—appears on MPAA's list of claimants. It appears on the alpha list as owned by New Line Cinema. New Line *has* certified its entitlement to royalties for *Dramatic Moments in Black Sports History.* The record, therefore, only will support a conclusion that MPAA represents New Line.

Id. at 43–44 (footnotes omitted).

In response to MPAA's challenge of *Critter Gitters* and *Bloopy's Buddies,* IPG acknowledges that it made no claim in these programs and did not present any evidence of their value "because both programs appear to have been broadcast exclusively on non-commercial television stations." IPG Reply to MPAA Petition to Modify CARP Report at 34. IPG "does not challenge modification of the Panel Report to reflect that such programs were not claimed by IPG." *Id.* IPG does assert, however, that there was evidence supporting its claim to *Dramatic Moments in Black Sports History,* stating that the program is "expressly identified in the contract between Litton and WSG" and was therefore properly credited to IPG. *Id.*

It is apparent that the CARP acted arbitrarily in crediting IPG with *Critter Gitters* and *Bloopy's Buddies,* and the Register recommends rejecting this determination and removing the programs from Litton's list. With respect to *Dramatic Moments in Black Sports History,* the CARP offered no reasons or explanation as to why it was awarding the program to IPG rather than MPAA, other than to state that such result was obtained "[i]n view of the entire supplemented record." CARP Report at 61–62. Unexplained decisionmaking is the hallmark of arbitrary action. The Register therefore recommends rejection of the CARP's award of *Dramatic Moments in Black Sports History* to IPG. The June 5, 2001, Order directed the CARP to explain its reasoning for awarding *Dramatic Moments in Black Sports History* to IPG.

In sum, the June 5, 2001, Order directed the Panel to credit the following programs to Litton: *Algo's Factory; Jack Hanna's Animal Adventures; Harvey Penick's Private Golf Lessons; Mom USA; Nprint; Sophisticated Gents; The Sports Bar;* and *Just Imagine.*[9] The Order also directed the CARP to explain its reasons for crediting *Dramatic Moments in Black Sports History* to IPG and, if it continued to believe that it made the correct determination, to credit IPG with that program.

4. The Royalty Awards

The CARP awarded IPG 0.5% of the program supplier category funds, and the remaining 99.5% to MPAA. The CARP, however, failed to explain its reasoning or its methodology for bestowing these awards. Because unexplained decisionmaking by a CARP is arbitrary, the CARP's awards must be rejected. The June 5, 2001, Order remanded the matter to the CARP to determine new awards for IPG and MPAA, in light of the decision announced in that Order to dismiss additional IPG claimants and programs, and to explain the reasoning for the new awards.

The CARP's failure to articulate any reasons for the 0.5% and 99.5% awards, and the methodology it used to produce these numbers, is puzzling. The CARP began its analysis in an appropriate fashion, fully detailing in its report the distribution methodologies proposed by IPG and MPAA. As discussed above, IPG's and MPAA's methodologies were premised on fundamentally different principles. MPAA addressed the marketplace value of the programs it represented by attempting to evaluate the amount of viewership they received, while IPG examined the value of the programs to cable operators who retransmitted them. IPG's methodology accorded the programs it represented a higher award—0.881%—than if the MPAA's methodology were applied to the same programs—0.0708%. The CARP then analyzed each side's criticisms of the other's methodology and concluded that a number of the criticisms were valid. It found the following shortcomings for MPAA's methodology:

—MPAA's direct testimony did not sufficiently lay the foundation for the survey or explain its results.
—The Panel was forced to call its own witnesses, Mr. Lindstrom from Nielsen, and Mr. Larson from Cable Data Corporation to explain their methods of data acquisition and reporting.
—The number of sampled stations [in MPAA's station survey] has declined without adequate explanation.
—Station selection criteria excluded Form 1 and Form 2 cable systems.
—The number of "zero" viewing hours shows the flaw in attempting to use the Nielsen data as a proxy for the retransmission market especially since Nielsen had 24 hour sampling capability in 1997.
—The method of interpolation of non-sweep month estimated viewing needs statistical validation.
—There is an overvaluation of WTBS and under-valuation of the other Superstations in the survey.

CARP Report at 102–103. For IPG, the CARP found the following criticisms:

—A mathematically sound basis for the creation and application of the station weight factor and time period weight factor should have been presented by a statistician.
—Daypart data was misapplied thus overstating "all other" viewing.
—It doesn't directly address the marketplace value of the works transmitted, a primary criteria.

Id. at 103. The Register has reviewed the record evidence in this proceeding and finds that there is ample support for these criticisms. They are not arbitrary. What is arbitrary, however, is what the CARP did next. Rather than address these criticisms in the context of its decision making process, the CARP immediately awarded the 0.5 and 99.5 percentages without any explanation as to how they arrived at these numbers. Since no reasoning was provided for these numbers, they must be rejected. *National Ass'n of Broadcasters* v. *Librarian of Congress,* 146 F.3d 907, 923 (D.C. Cir. 1998)(royalty distribution award arbitrary if rendered without explanation). The June 5, 2001, Order directed the CARP to provide a full explanation of the approach it was using in adopting new distribution awards.[10]

[9] The CARP determined that Just Imagine was properly credited to Litton, and not to Flying Tomato Films. Both of these parties are represented by IPG. No challenge to the CARP's determination on this matter was made.

[10] In explaining their final numbers, CARPs have flexibility in the methodologies or approaches they

Continued

The Revised CARP Report

On June 20, 2001, the CARP delivered its revised report. The revised report assigns new distribution percentages to IPG and MPAA and explains the CARP's reasoning for both its initial awards and the revised awards.

As directed by the June 5, 2001 Order, the CARP only credited IPG with programs belonging to Litton Syndications. The programs are: *Algo's Factory, Jack Hanna's Animal Adventures, Harvey Pennick's Private Golf Lessons, MomUSA, Nprint, Sophisticated Gents, The Sports Bar* and *Just Imagine*. The CARP did not credit IPG with *Dramatic Moments in Black Sports History*, reversing its earlier determination that Litton was the syndicator of the program. *See* Initial report at 62; Revised report at 2. The CARP determined that "[a]lthough both parties claim this program, New Line Cinema's program certification with MPAA indicates that it claims the program as syndicator." Revised report at 2.

With respect to awards, the CARP modified its initial determination by reducing IPG's award from 0.5% to 0.212% , and increasing MPAA's award from 99.5% to 99.788%. The CARP then explained how it determined the initial 0.5% and 99.5% awards, and then modified them in light of the June 5, 2001, Order to produce the new percentages.

Although the CARP was presented with disparate methodologies for calculating the royalty awards-MPAA's methodology based on Nielsen household viewing hours and IPG's methodology based on value of the programming to cable operators—the CARP did find two elements of these competing methodologies in common. MPAA based its methodology upon a database obtained from CDC that contained 82 commercial television broadcast stations that were retransmitted by large (Form 3) cable systems on a distant basis during 1997. IPG based its methodology upon a CDC database that contained 99 commercial television broadcast stations (which included the same 82 stations used by MPAA) that were retransmitted by small, medium, and large (Form 1, 2, and 3) cable systems on a distant basis during 1997. Both of these databases have two overlapping categories: "Rebroadcasts," the number of times a particular program was retransmitted; and "Airtime," the length of the program multiplied by the number of times it was rebroadcast. The CARP stated that the purpose of examining the two databases was two-fold: "First to verify the accuracy of the numbers presented in the testimony and exhibits; and secondly to give the CARP a sense of the relative positions of MPAA and IPG represented claimants in the 1997 marketplace by comparing the only two categories included in both databases, Rebroadcasts and Airtime." Revised report at 18.

Appendix A of the revised CARP report compares the Rebroadcasts of the eight programs credited to Litton (as directed by the June 5, 2001 Order) for both the IPG and MPAA databases. For the IPG database, these programs accounted for 0.4394782365% of the total number of program titles Rebroadcast in 1997. For the MPAA database, the eight programs account for 0.2811997603% of the total number of program titles Rebroadcast in 1997.

Appendix B of the revised CARP report compares the Airtime of the eight programs credited to Litton for both the IPG and MPAA databases. For the IPG database, these programs accounted for 0.3494840195% of total Airtime of all programs retransmitted in 1997. For the MPAA database, the programs accounted for 0.2171099164% of the total Airtime of all programs retransmitted in 1997.

The numbers described in Appendices A and B provide a range of comparison as to the amount of time that Litton's eight programs were available on distant broadcast signals retransmitted by cable systems. But this range did not account for how much these programs were watched, or the value ascribed to these programs by cable operators. To account for this, the CARP turned to MPAA's and IPG's methodologies and applied its criticisms of the evidence presented for each methodology, assessing penalties (percentage deductions from the total award yielded by the methodology) for each criticism depending upon the severity of the criticism. The eight criticisms of MPAA's methodology and the three criticisms of IPG's methodology, and their accompanying deductions, are described in Appendix D of the CARP's revised report. As a result of the eight criticisms, MPAA suffered a 0.450% reduction in the awards yielded by its methodology, and IPG suffered a 0.375% reduction in the awards yielded by its methodology.

As with its comparison of IPG and MPAA databases, the revised IPG and MPAA methodologies (i.e. after the penalty reductions) yielded yet another range of numbers. For IPG, the revised MPAA methodology gave it an award of 0.462% of the 1997 royalty funds, while revision of its own methodology yielded an award of 0.731%. *See* Appendix D. According to the CARP, it is this range of numbers that yielded the 0.5% award to IPG in the initial report. Revised report at 18.

Because the June 5, 2001, Order eliminated programs credited to IPG under both MPAA's and IPG's methodologies, the CARP needed a way to adjust downward IPG's award, and increase MPAA's award, to reflect the eliminated programs. It did this by examining the reduction in the percentages of Rebroadcasts and Airtime credited to IPG for its original claim and derived a median change of minus 57.673%. Appendix C. The minus 57.673% figure represents the median change from the original amount of Rebroadcasts and Airtime credited to IPG. According to the CARP, "[e]liminating all claimants except Litton, means that on average, IPG now represents only 42.322% of the Rebroadcasts and Airtime that they did before." Revised report at 20. This meant that "IPG is entitled to 42.322% of the Original Award" of 0.5%. *Id.* Consequently, the CARP awarded IPG 0.212% of the 1997 royalty funds in the syndicated program category, and the remaining 99.788% to MPAA.

Petitions to Modify the CARP's Revised Report

Both MPAA and IPG level a number of criticisms at the conclusions reached by the CARP in the revised report, all of which they charge rise to the level of arbitrary action as a matter of law. MPAA submits that the CARP's award of 0.212 of one percent of the royalty funds to IPG is excessive and must be reduced. IPG counters that the methodology used by the CARP is fundamentally flawed and that its award must be increased.

MPAA charges that the CARP made mathematical, methodological, and evidentiary errors in both the initial and revised reports. The principal mathematical error, according to MPAA,

use. The courts have recognized that there is a considerable "zone of reasonableness" when awarding a particular distribution percentage. *See, e.g. National Cable Television Ass'n v. Copyright Royalty Tribunal*, 724 F.2d 176, 182 (D.C. Cir. 1983). In other words, there are no magical formulas that produce precise results. In this proceeding, the CARP could have chosen either IPG's or MPAA's formulas, adjusted the chosen formula to account for the CARP's criticisms of it, and used that process to yield the final numbers. Or, the CARP could have chosen a combination of both formulas, taking into account the criticisms of both, to arrive at the final numbers. Or, the CARP could have adopted its own distribution methodology or formula, using the data in the record of the proceeding to achieve the final results. Each of these approaches is acceptable *provided* that the CARP articulates the reasons for its choice, explains how it applied its choice to produce its final determination, and the determination itself is reasonable.

concerns the CARP's use of IPG's requested royalty distribution percentage of 0.881. In appendix D to the revised report, the CARP used the 0.881% distribution percentage offered by IPG and adjusted it downward by 0.375% to reflect its three criticisms of IPG's evidentiary presentation. MPAA states that 0.881% is the wrong starting percentage because it reflects all the programs originally claimed by IPG and does not take into account the programs that the CARP eliminated from IPG's claim. Using IPG's valuations for each of its claimed programs, MPAA asserts that the CARP should have adjusted the 0.881% claim of IPG downward to 0.332%, since only 37.68% of the programs originally claimed by IPG were credited by the CARP in its initial report. MPAA Petition to Modify Revised Report at 5. Deducting 0.375% for the three criticisms of IPG's evidentiary presentation from 0.332% yields a negative distribution percentage for IPG.

MPAA challenges the methodology employed by the CARP; in particular the use of Rebroadcasts and Airtime for IPG's and MPAA's represented programming. MPAA asserts that this approach unduly relies upon time considerations (i.e. time on the air) and ignores the marketplace value of the programming in contravention of prior CARP precedent. CARP Report in Docket No. 94–3 CARP CD 90–92 at 19–20 (June 3, 1996). These considerations aside, MPAA also questions the usefulness of comparing Rebroadcasts and Airtime from both MPAA's and IPG's sample surveys, since MPAA's 82 station sample survey contains more rebroadcasts and more hours of airtime than IPG's 99 station survey. The inherent illogic of this result should have, according to MPAA, indicated to the CARP that reliance solely on these numbers is flawed.[11]

MPAA also makes numerous challenges to the CARP's treatment of the evidence presented in this proceeding. In particular, MPAA asserts that the CARP's five criticisms of various aspects of MPAA's evidentiary presentation, that resulted in a 0.450% upward adjustment to IPG's share of the royalties as identified by MPAA, are baseless. First, MPAA argues that the 82 station sample survey it put forth was statistically sound since it "very nearly reflects the entire universe of distant signal carriage, accounting for 92.5 per cent of aggregate subscribers instances. Therefore, the possibility of a margin for error that is in any way significant is nil." MPAA Petition to Modify Revised Report at 12.

Second, MPAA argues that there is no record evidence that demonstrates that exclusion of Form 1 and Form 2 cable systems from the total instances of distant cable carriage of syndicated programming negatively impacts the results of its 82 station sample survey, since the Form 3 cable systems used in the survey account for 89% of all cable subscribers to distant broadcast stations. Third, MPAA argues that the CARP had no grounds to criticize the number of zero viewing instances reported in the Nielsen household viewing hours used in the MPAA survey, especially since Paul Lindstrom, the only qualified expert in economics and statistics testifying in the proceeding, asserted that they did not have a significant bearing on the statistical validity of the survey.

Fourth, MPAA charges that it was inappropriate and unfair for the CARP to criticize MPAA for not presenting relative error figures with respect to its methodology components and for mixing Nielsen diary data with Nielsen meter data. Finally, MPAA charges that it was groundless for the CARP to penalize MPAA 0.10% for its interpolation of data for time periods not measured by Nielsen (i.e. non sweeps periods) and only accord IPG a 0.075% penalty for a similar criticism.

IPG also asserts that the CARP made a series of errors in fashioning both the original awards and the revised awards. IPG asserts that the CARP erroneously assigned two programs—*Dream Big* and *Dramatic Moments in Black Sports History*—to MPAA. *Dream Big* was credited to MPAA in the CARP's original report because it identified Warner Bros. as the syndicator of the program. With respect to *Dramatic Moments in Black Sports History*, the CARP originally assigned it to IPG (as claimed by Litton) but was directed by the Librarian's June 5, 2001, Order to provide an explanation for this decision. In the revised report, the CARP changed its mind and assigned *Dramatic Moments in Black Sports History* to MPAA because it concluded that New Line Cinema was the syndicator of the program, not Litton. IPG submits that if the Librarian does not restore these two programs to Litton's claim, then he should "place the funds for the[se] program[s] * * * in escrow until the proper recipient is determined." IPG Petition to Modify Revised Report at 4.

Like MPAA, IPG criticizes the CARP's reliance upon the number of Rebroadcasts and Airtime in fashioning its awards, noting that undue reliance on time considerations is contrary to precedent of the CRT and is not reflective of the value of the programming. IPG states that it provided the CARP with the unit value for each of its claimed programs (utilizing IPG's methodology), thereby giving the CARP the opportunity to derive an award based on the programs it credited to IPG. The eight programs credited to Litton amount to 79.074% of the original award to IPG of 0.5%, meaning that the CARP should have adjusted the original 0.5% award downward to 0.3958%. Such an award would, according to IPG, reflect the true value of the Litton programs.

With respect to the CARP's criticisms of MPAA's methodology, IPG argues that the CARP did not go far enough. IPG asserts that the CARP never verified the number of household viewing hours attributed to MPAA in its study, noting that MPAA received credit for appreciable numbers of programs not claimed by MPAA or certified by its members. Further, IPG asserts that the CARP should have penalized MPAA for having to call Paul Lindstrom and Thomas Larson as witnesses to provide additional support for MPAA's methodology. And IPG submits that the CARP should have penalized MPAA more than it did for reducing the number of stations in its station sample survey and for the large amount of zero viewing instances of programming contained in the Nielsen data presented by MPAA.

Finally, IPG asserts that certain of the CARP's criticisms of IPG's methodology are not valid. With respect to the CARP's critique that IPG misapplied its daypart data thereby overstating its weighted viewing factor, IPG asserts that no evidence was presented to demonstrate that such misapplication provided any benefit to IPG. And, with respect to the CARP's criticism that IPG's methodology attempted to demonstrate the overall appeal of broadcast stations to cable operators, as opposed to the overall appeal of the programming to cable operators, IPG argues that the CARP simply mischaracterized its summary reference of "overall station appeal" by ignoring the elements that comprised this aspect of IPG's methodology.

Rejection of the Revised Report

The Register makes her recommendation as to whether the

[11] IPG counters this argument by noting that MPAA's 82 station data includes all broadcasts, irrespective of whether the program falls in the syndicated programming category or another category (such as sports, local programming, etc.) and irrespective of whether the program is claimed by IPG, MPAA or no party. IPG's 99 station data makes these distinctions, resulting in fewer measured broadcasts and broadcast hours.

revised royalty awards to IPG and MPAA should be adopted by the Librarian of Congress, or whether they are arbitrary or contrary to the provisions of the Copyright Act, title 17, United States Code. In making this recommendation, the Register has reviewed both the initial report of the CARP and the revised report, including the petitions to modify both reports filed by the parties. For the reasons stated below, the Register concludes that both the initial report and the revised report are arbitrary and must be rejected.

Review of the initial report and the revised report reveals a number of arbitrary actions by the CARP. These include: (1) Failure to adequately explain the evidence supporting the CARP's reversal of its award of Dramatic Moments in Black Sports History from IPG to MPAA; (2) failure of the CARP in its initial report to adjust downward IPG's requested distribution percentage after the CARP eliminated a number of IPG's claimed programs; (3) failure of the CARP in its initial report to adjust upward MPAA's requested distribution for IPG given the number of programs which the CARP credited IPG; (4) failure of the CARP in the revised report to adjust both IPG's and MPAA's requested distributions in light of the final programs credited to IPG; (5) failure of the CARP to base any of its downward deductions to both IPG's and MPAA's methodologies (based on the CARP's criticisms) on record evidence; and (6) adoption by the CARP of a distribution methodology that arguably has little relationship to the marketplace value of the programs. In recommending rejection of the CARP's determination, the Register focuses her discussion on the second failure described above-the lack of downward adjustment to IPG's requested distribution in light of the programs credited-because it created a fundamental flaw in the CARP's approach that invalidates the distribution awards granted IPG in both the initial and the revised reports.

The CARP's distribution methodology, articulated only in the revised report, is fully discussed above. Briefly recapped, it is the product of two "ranges." First, the CARP utilized the Rebroadcast and Airtime data-the only data categories common to both methodologies-to give the CARP "a sense of the relative positions of MPAA and IPG represented claimants in the 1997 marketplace." Revised Report at 18. This produced the first range for locating the CARP's final awards. Then, the CARP utilized "the parties competing requests for allocations and the formulas presented advocating their averred distribution percentages," adjusting them by applying deductions reflective of the CARP's criticisms of the respective methodologies. This produced the second range for locating the CARP's final awards. The second range appears to be the one actually used by the CARP to settle upon its original award of 0.5% to IPG. *Id.*

A critical flaw occurs with the inputs for the second prong of the CARP's methodology. The CARP started with IPG's requested distribution percentage of 0.881%, drawn from IPG's proposed findings of fact and conclusions of law. The 0.881% is an inflated percentage, however, because it was based upon inclusion of all programs originally claimed by IPG. Earlier in the CARP's initial report, it spent considerable time discussing the validity of IPG's claimed programs and found a number of the claims invalid. *See*, Initial Report at 72–74 (royalty allocation for *Dragon Ball Z* to MPAA; no royalty allocation for *Enchanted Tales* and *Thumbelina;* royalty allocation for *Dream Big* to MPAA; no royalty allocation for *Bottom Line, By River By Rail, Til Earth and Heaven Ring;* no royalty allocation for *Lou Rawls Parade of Stars;* no royalty allocation for *Psychic Friends, Psychic Friends Network, Psychic Revival Network, Psychic Solution, Psychic Talk, Psychic Talk 2, Psychic Talk USA, Psychic Talk Thirty).* These programs were included in IPG's 0.881% request. It was therefore arbitrary for the CARP to accept the 0.881% figure as a starting point because it had eliminated many of the programs that produced this number.

Likewise, the CARP made the same error when it looked at the distribution percentage for IPG yielded by MPAA's methodology. MPAA's distribution percentage of 0.012% was based on only seven programs credited to IPG. However, in its initial award, the CARP credited IPG with far more than just seven programs. It was therefore arbitrary for the CARP to use the 0.012% figure as a starting point for its application of MPAA's methodology.

In sum, the faulty inputs to the second prong of the CARP's methodology make the range generated by that prong wholly inaccurate, thereby rendering the initial award erroneous. The revised report, since it merely takes the original award to IPG and makes a median change to it based upon the reduction in programs credited to IPG, is likewise erroneous. Although there are other serious flaws in the CARP's approach, as described above, the Register need go no further. The CARP's determination must be rejected, and the Librarian must substitute his own determination.

Part Two—Recommendation of the Register

This is not the first time that the Register of Copyrights has recommended, and the Librarian of Congress has accepted, a rejection of a decision of a CARP. In most of those cases, the Register has recommended that only portions of a CARP's decision be rejected, *see*, e.g., 61 FR 55653 (October 28, 1996)(cable distribution); 62 FR 55742 (October 28, 1997)(satellite rate adjustment). In one case, the Register recommended that the Librarian reject the royalty rate established by the CARP, and substitute his own determination. 63 FR 25394 (May 8, 1998)(digital performance right in sound recording rate adjustment).

Section 802(f) of the Copyright Act provides that "[i]f the Librarian rejects the determination of the arbitration panel, the Librarian shall * * * after full examination of the record created in the arbitration proceeding, issue an order setting the royalty fee or distribution of fees, as the case may be." 17 U.S.C. 802(f). As discussed above, the distribution methodology applied by the CARP in this proceeding is so flawed that any distribution percentages generated by it are inherently arbitrary. As a consequence, there must be an independent review of the record to resolve this proceeding.

Distribution Criteria

Section 111 does not prescribe the standards or guidelines for distributing royalties collected from cable operators under the statutory license. Instead, Congress decided to let the Copyright Royalty Tribunal "consider all pertinent data and considerations presented by the claimants" in determining how to divide the royalties. H.R. Rep. No. 1476, at 97 (1976). In the first cable distribution proceedings, the Tribunal fashioned five distribution criteria: three primary criteria and two secondary criteria. The three primary criteria were: (1) The harm caused to copyright owners by secondary transmissions of their copyrighted works by cable systems; (2) the benefit derived by cable systems for secondary transmissions of the copyrighted works; and (3) the marketplace value of the works. The secondary criteria were: (1) the quality of the copyrighted program and (2) time-related considerations. *National Ass'n of Broadcasters* v. *Librarian of Congress*, 146 F.3d 907 (D.C. Cir. 1998). In 1989, the Tribunal eliminated the secondary criterion of program quality from its consideration. 57 FR 15286, 15303

(April 27, 1992). In 1998, the Librarian determined that a CARP did not act arbitrarily by eliminating the primary criterion of harm to the copyright owner. *NAB*, 146 F.3d 907 (D.C. Cir. 1998).

In considering the value of programming in a Phase II cable distribution proceeding, we must simulate the marketplace for that programming. Under the statutory license regime of section 111, programs are not bought and sold in the open marketplace-the statutory license substitutes for the marketplace. Cable operators pay an established fee for the privilege of retransmitting all the programs contained on a particular broadcast signal, rather than license the programs individually. However, just because cable systems pay a single fee for all the programs does not mean all the programs are of equal value. The established distribution criteria, as modified, must be applied in an effort to simulate a marketplace for these programs where one does not exist because of section 111. We now turn to a consideration of the evidence presented by MPAA and IPG as to the value of their programs.

The Programs

Before considering the appropriate methodology for distributing the 1997 cable royalties in the syndicated programming category, the programs to be credited to MPAA's and IPG's royalty distribution claims must be determined.[12] In the Librarian's June 5, 2001 Order, IPG's program claim in this proceeding was pared down to the following eight programs: *Algo's Factory; Jack Hanna's Animal Adventures; Harvey Pennick's Golf Lessons; Mom USA; Sophisticated Gents; Nprint; Just Imagine* and *The Sports Bar*. Order in Docket No. 2000–2 CARP CD 93–97 at 1 (June 5, 2001). Each of these programs is claimed by Litton Syndications. IPG claims an additional two programs on behalf of Litton: *Dream Big* and *Dramatic Moments in Black Sports History*.

A. Dream Big

Dream Big is listed in exhibit D of IPG's written direct case as belonging to Litton. Litton's representation agreement with IPG lists *Dream Big* as a program claimed by Litton, and the representation agreement contains the following boilerplate language:

> Principal (i.e. Litton) warrants that to the best of Principal's knowledge Principal has the right to collect the Distribution Proceeds to Programs, and has not previously conveyed the right to collect the Distribution Proceeds to any third party.

Representation agreement at 2, clause 7. At hearing, on cross-examination of IPG's witness Raul Galaz, the following exchange took place:

Q: The program *Dream Big*, Mr. Galaz, do you know who the copyright owner of that program is?

A: No.

Q: And, again, do you know who the syndicator of that program is?

A: My understanding is that Litton Syndications is the syndicator.

Q: And do you know, again, the nature of the particular right or interest owned by Litton with respect to their entitlement to Section 111 royalties?

A: No, I don't know whether they are, additionally, an owner.

Q: I didn't hear you. I'm sorry.

A: I don't know whether they are, additionally, an owner or not.

Tr. 1063–64. No additional testimony regarding *Dream Big* took place.

In its petition to modify the initial decision of the CARP, IPG requests that the Librarian reopen the record to admit a copy of an agreement between Warner Vision Entertainment and Litton which, according to IPG, conclusively proves that Litton holds the syndication rights to *Dream Big*. The agreement states that Warner Vision "hereby grants to Litton, and Litton hereby accepts, the right to syndicate a children's audio-visual series tentatively entitled 'Real Kids.'" IPG Petition to Modify CARP Report at appendix 2. IPG asserts that Warner Vision is a subsidiary of Warner Bros., and that "Real Kids" is the initial name for *Dream Big*.

MPAA claims *Dream Big* in exhibit D of its written direct case. *Dream Big* is identified on MPAA's Alpha List (a listing of all programs broadcast in 1997 and including both MPAA-represented and IPG-represented programs) as belonging to Warner Bros. MPAA also obtained a program certification form from Warner Bros. that lists *Dream Big* as a Warner Bros. program. The certification form, signed by Michael Troxler, Vice President of Finance, contains MPAA's boilerplate language stating that Warner Bros. is entitled to receive 1997 cable royalties for *Dream Big* by virtue of being "An officer (if a corporation) or a partner (if a partnership) of the legal entity identified as the owner or the authorized agent of the owner of the programs on the printout." IPG Exhibit 7XR at 389. Other than the cross-examination of Mr. Galaz identified above, MPAA did not put forth any further information at hearing regarding *Dream Big*.

In reaction to IPG's request to reopen the record and have the Librarian consider the Warner Vision/Litton agreement, MPAA submits an April 11, 2000, letter of Michael Troxler of Warner Bros. stating:

> WarnerVision is the rightful copyright holder to the series Dream Big. This was subdistributed on behalf of WarnerVision by Litton for a clearance fee based upon U.S. coverage. Since Litton was paid a clearance fee, they are not entitled to any of the Cable Copyright Royalties.

MPAA Reply to IPG Petition to Modify CARP Report at appendix 2.

In *National Broadcasting Co., Inc.* v. *Copyright Royalty Tribunal*, 848 F.2d 1289 (D.C. Cir. 1988), the Court reviewed the Copyright Royalty Tribunal's attempt to resolve competing claims for the program *Little House on the Prairie*. NBC created and produced the program and granted to Worldvision, Inc. exclusive rights to distribute the program for a period of 35 years. The Tribunal determined that Worldvision, as the exclusive syndicator of the program, was the party entitled to section 111 royalties. The Court upheld this conclusion, stating:

> The CRT determined that the directly affected party [from the harm caused by retransmission of the program by cable systems] will typically be the exclusive syndicator, and that the CRT will therefore as a general rule always distribute royalties initially to the syndicator. This presumption by the CRT, in the face of congressional silence, is a permissible interpretation of the statute, to which we defer.

848 F.2d at 1296.

Examining the record evidence, the Register cannot ascertain who is currently the exclusive syndicator of *Dream Big*. The non-record evidence, even if admitted, still does not resolve the issue. And section 802(f) of the Copyright Act states that the Librarian shall base his decision only upon the record evidence.

Given the dearth of record evidence, it would be arbitrary for the Register to recommend that *Dream Big* be awarded to either MPAA or IPG. Consequently,

[12] As a practical matter, the focus will be on the programs represented by IPG. The reason for such focus is obvious. There are only two claimants in this proceeding: one that represents most of the programs eligible for distribution (MPAA), and one that represents only a few (IPG). Once it is determined which IPG-represented programs are eligible for a distribution of the 1997 royalty funds, the value of those programs can be ascertained and IPG's distribution share can be established. Assuming that ineligible and unclaimed programs are excluded from consideration, there is no need to focus on the eligibility of MPAA programs (except as they affect IPG's claim to the same program), since the remainder of the 1997 fund will go to MPAA once IPG's share is deducted. *But see* discussion of MPAA's methodology, *infra*.

the Register recommends that the only acceptable course of action is to seek further evidence from the parties to determine the proper status of the program when the proceeding is remanded to a new CARP.

B. Dramatic Moments in Black Sports History

Dramatic Moments in Black Sports History ("*Dramatic Moments*") is also claimed by both MPAA and IPG. The record for Dramatic Moments is as follows.

IPG identifies *Dramatic Moments* in exhibit D of its written direct case as belonging to Litton. The program is identified in Litton's representation agreement with IPG and contains the same contract warranty provision that applies to *Dream Big*. At hearing, the following exchange took place on cross-examination of Mr. Galaz, IPG's sole witness.

Q: Okay. The program *Dramatic Moments in Black Sports History*, do you know who the copyright owner of that program [is], Mr. Galaz?

A: No.

Q: Do you know the syndicator?

A: My understanding is that Litton Syndications is the syndicator.

Q: And do you know the particular right or interest owned by Litton relative to their entitlement to Section 111 royalties?

A: Whether it's as the owner or syndicator, I don't know.

Q: But if it is the owner or syndicator, do you know who they—when they acquired and how they acquired the right? If they are a syndicator, not if they're an owner?

A: Restate your question.

Q: If they're a syndicator, if indeed they are the syndicator, do you know how that right was acquired?

A: Well, they can be both the owner and the syndicator.

Q: Right.

A: So your question was asking whether or not

Q: Right. If they—

A:—the nature of the right, and the nature of the right could be as both the owner or the syndicator. I don't know which.

Q: You don't know whether they're the owner as well as the syndicator?

A: My understanding is that they're the syndicator. I do not know whether they are, additionally, the owner.

Tr. 1062–63. No further record evidence was presented by IPG regarding the program.

In exhibit 3 of its written direct case, MPAA identifies *Dramatic Moments* as part of its claim. The program appears on the revised Alpha List of MPAA programming, identifying New Line Cinema as the claimant. MPAA presented a program certification form for New Line Cinema, which states that New Line is an officer or partner of the "legal entity identified as the owner or the authorized agent of the owner of the programs on the printout." IPG ex. 7XR at 188. The certification is signed by Frank A. Buquicchio, who identified himself as the Senior Vice president of Television and Ancillary Accounting for New Line. Other than the cross-examination of Mr. Galaz, MPAA presented no other evidence as to the ownership of *Dramatic Moments*.

In its petition to modify the further report of the CARP, IPG argues that the burden should be on MPAA to prove its claim to *Dramatic Moments*. IPG asserts that MPAA did not produce the program certification forms until one day before the start of the hearings, thereby precluding IPG's ability to prepare an effective cross-examination on program ownership. IPG further asserts that if the Librarian cannot resolve the proper ownership of the royalties attributable to *Dramatic Moments*, the money should be placed in escrow to permit resolution between Litton and New Line Cinema.

As with the case of Dream Big, neither IPG nor MPAA have presented sufficient evidence to permit a determination as to who should receive credit for *Dramatic Moments*. Consequently, the Register recommends that further evidence must be adduced on remand to resolve the status of this program.

The Evidentiary Presentations

As discussed above, IPG and MPAA presented competing statistical methodologies to support their claims to the 1997 syndicated programming royalty pool. MPAA's presentation operates from the assumption that viewership of programs retransmitted by cable operators in 1997 is the way to measure the value of those programs, and provides a sample survey purporting to gauge viewing. IPG's presentation operates from the assumption that every program retransmitted in 1997 has value and should be compensated from the royalty pool, and provides a sample survey that attempts to value each program based upon the royalty fees generated by television stations broadcasting the programming.

A. MPAA's Presentation

1. *Description of the methodology.* MPAA's written direct case consists of the testimony of Marsha Kessler, Vice President of Retransmission Royalty Distribution at MPAA, and the nine exhibits that she sponsors. In addition, MPAA designated the direct testimony and exhibits of Paul Lindstrom, Leonard Kalcheim, and James Von Schilling from Docket No. 97–1 CARP SD 92–95 (1992–1995 satellite royalty distribution) and the direct and rebuttal testimony and exhibits of Marsha Kessler, Allen Cooper and Paul Lindstrom from Docket No. CRT 91–2–89CD (1989 cable royalty distribution). During the course of the proceeding, at the behest of the CARP, MPAA presented two additional witnesses: Paul Lindstrom of Nielsen Media Research and Thomas Larson of Cable Data Corporation.[13]

MPAA attempts to demonstrate the marketplace value of movies and syndicated programs retransmitted by cable systems in 1997. As it has done in previous royalty distribution proceedings before the Copyright Royalty Tribunal and the CARPs, MPAA submits that the best way to determine the marketplace value of a television series or movie is to examine how many people watched the program in the given distribution year. The greater the number of people who watched the program, the more valuable the program is. MPAA notes that in cable and broadcast markets where programs are bought and sold without the constraint of a compulsory license, broadcasters purchase the rights to broadcast a particular program based upon the number of viewers they believe the program will attract. The same is true for cable programmers. Kessler Direct at 12–13. And advertisers are willing to pay broadcasters and cable programmers higher fees to have their ads aired during programs that attract many viewers. *Id.* Thus, from MPAA's perspective, viewer avidity for a particular program is the best determinative of the program's marketplace value.

MPAA constructs a study—a sampling of the cable retransmission universe in 1997—that attempts to demonstrate the amount of viewing that the programs claimed by MPAA and IPG garnered on broadcast stations that were retransmitted on a distant basis.[14] It is not a study that reveals how many people in the United States actually watched a given program; the cost of such an undertaking would be too high.

[13] MPAA also presented testimony from David E. Farbman regarding activities of IPG's principal, Raul Galaz. His testimony is not relevant to the calculation of royalty shares.

[14] The study only attempts to estimate viewership for programming retransmitted by cable systems on a distant basis, since local retransmissions of the same program are not compensable under the cable license. *See* 17 U.S.C. 111(d)(3)(A).

Rather, the MPAA study generates estimates of viewing, described as total household viewing hours (HHVH) for each program claimed by MPAA and IPG.

MPAA's study utilizes data from three sources—Cable Data Corporation ("CDC"), TV Data and Nielsen Media Research ("Nielsen"). MPAA Proposed Findings at 20, ¶ 55. First, MPAA determines the number of television stations that it wishes to include in its survey. For the 1997 study, MPAA selected 82 TV broadcast stations. These stations were retransmitted by Form 3 cable systems (MPAA excluded Form 1 and Form 2 systems) and account for 92.5% of aggregated subscriber instances. *Id.* "Aggregated subscriber instances," means that subscribers receiving broadcast programming were viewing it on a distant signal basis only, since section 111 of the Copyright Act does not allow compensation for programming that is retransmitted on a local basis. Thus, the 82 stations used in MPAA's study account for 92.5% of distant signal viewing of MPAA and IPG programs. This data was supplied by CDC.

Next, MPAA consults the TV Data television log books to determine what programs were broadcast at what times. For 1997, MPAA examined the log books for the 82 stations it included in its survey. Exhibit 3 of MPAA's written direct case identifies the programs which MPAA claims that it represents in this proceeding, along with the number of broadcasts of each program on the 82 stations surveyed. Of the over 3,700 titles, over 500 of these are television series (sitcoms, dramas, etc.) while the remaining titles are movies. MPAA Proposed Findings at 14, ¶ 42. MPAA makes great effort to demonstrate that its claim includes most of the top-rated syndicated television series and movies. Kessler Direct at 6–7.

Finally, MPAA takes the programming data from these two sources and matches it to viewing data supplied by Nielsen. Nielsen provides the names of the programs that were broadcast for each station in the study, the number of 15-minute segments (referred to as quarter hours (QH)) each program aired on that station, and what MPAA describes as the average number of cable subscribers who viewed each program on that station on a distant basis. Kessler Direct at 8. Using this information, MPAA then calculated the household viewing hours for each program appearing in the study. The formula that MPAA utilized to make this calculation is as follows:

$(\Sigma QH/4) \times \text{average DCHH} = \text{HHVH}$

Id. Marsha Kessler stated the formula thus:

> Add together the total number of 15 minute (QH) segments a program is broadcast in a particular time slot on a particular station. Divide that number by 4 to get an hourly measure. Multiply the result by the average number of distant cable households (DCHH) that actually watched [the] program on that station during that time period.

Id.

It is important to note that the data supplied by Nielsen does not attempt to measure viewing 365 days a year. Rather, Nielsen conducts "sweeps'—0limited periods of time in which actual viewing to programming is measured. Nielsen can only provide viewing data for four or six sweeps periods, meaning that substantial portions of the year are not measured. To counteract this problem, MPAA devised a method for interpolating viewing for those periods when Nielsen data is not available. Using data supplied by Nielsen, MPAA assigns an estimated number of viewers for a given broadcast station for a given quarter hour in a given day. For example, there are no Nielsen sweeps in June. To determine viewership for a program broadcast on a specific station during a specific time period in June, MPAA averages the viewing for the same time slot in May (a sweeps month) and July (also a sweeps month) to estimate what viewership would be for the corresponding time slot in June. The process is described as straight line interpolation. Tr. 1615–16.

Once armed with household viewing data for all programs broadcast by the 82 stations in its survey, MPAA determined the household viewing hours for all of its programs and IPG's programs. MPAA determined that the total household viewing hours for MPAA and IPG programming was 3,476,625,750. MPAA Proposed Findings at 73, ¶ 291. MPAA's programming received 3,476.218,917 household viewing hours, while IPG's programming received 406,833. *Id.* This calculation was based on MPAA's assignment of household viewing hours to the following IPG programs:

Algo's Factory—11,707 viewing hours.

Harvey Pennick's Private Golf Lessons—5,193 viewing hours.

Jack Hanna's Animal Adventures—372,488 viewing hours.

Mom USA—0 viewing hours.

Nprint—1645 viewing hours.

Sophisticated Gents—7010 viewing hours.

The Sports Bar—8790 viewing hours.

Id. at 72, ¶¶ 285–291. Missing from this calculation is *Just Imagine*, which the Librarian has credited to IPG's claim. *See* June 5, 2001 Order at 2.

Based on its household viewing hour calculations, MPAA claims that it is entitled to 99.9871% of the 1997 cable royalties, while IPG is entitled to 0.0117% of the royalties (for the seven Litton programs). MPAA Proposed Findings at 73, ¶ 291.

2. *Validity of the methodology.* Throughout the course of this proceeding, IPG has attempted to sully both the construct and the application of the MPAA methodology. Many of these criticisms were accepted by the CARP. *See, generally,* Initial report at 102–103; Revised report at 5–12. We now consider these criticisms as part of our evaluation of the evidentiary presentation of MPAA.

At the outset, we affirm what the Copyright Royalty Tribunal long ago stated: that actual measured viewing of a broadcast program is significant to determining the marketplace value of that program. 51 FR 12792, 12808 (April 15, 1986). In a perfect world, we would know all viewing to all programs that were retransmitted on a distant basis by all cable systems in 1997. We recognize that the cost of attempting to present such evidence would be prohibitive. Even if we had access to such information, the inquiry would not end there because there are other factors besides viewing that can have a bearing on the marketplace value of a program. Because we are charged with the task of simulating the marketplace for a broadcast program in an effort to determine the value of the program, the Register must consider those factors, where relevant, in the equation as well.

Given the recognition that viewing of programs has probative value, we turn to a consideration of MPAA's presentation. The construct of MPAA's methodology is generally similar to that presented in previous cable distribution proceedings before the Tribunal and the CARPs. There are, however, some notable differences. In prior proceedings, particularly at Phase I, experts from Nielsen participated in the construct and presentation of the study, as well as supplying the viewing data. Nielsen's participation in MPAA's study in this proceeding is limited to providing select data for use by others. Lindstrom Tr. 1387–88; 1407; 1421; 1439–42. Consequently, we have refrained from describing the 82 sample station survey as the "Nielsen" survey. In addition, MPAA has derived a considerable volume of viewing hours from a process described as "interpolation," which it is has not presented extensively in prior

proceedings. "Interpolation" is discussed *infra*.

When the MPAA presented its viewing study to the Copyright Royalty Tribunal in Phase I proceedings, the Tribunal described the study as a good "starting off point." 57 FR 15286, 15288(April 27, 1992)(1989 cable Phase I distribution). Is the MPAA's 82 station sample survey a "good starting off point" for this proceeding?[15]

The CARP concluded that MPAA's 82 station sample survey was "stretched to cover more ground and answer more questions than it was originally designed to do." It listed eight specific criticisms of the MPAA approach:

—MPAA's direct testimony did not sufficiently lay the foundation for the survey or explain its results.
—The Panel was forced to call its own witnesses, Mr. Lindstrom from Nielsen, and Mr. Larson from Cable Data Corporation to explain their methods of data acquisition and reporting.
—The number of sampled stations has declined without adequate explanation.
—Station criteria excluded Form 1 and Form 2 cable systems.
—The number of "zero" viewing hours shows the flaw in attempting to use the Nielsen data as a proxy for the retransmission market especially since Nielsen had 24 hour sampling capability in 1997.
—There are unanswered technical questions regarding relative error rates and mixing diary and meter data.
—The method of interpolation of non-sweep month estimated viewing needs statistical validation.
—There is an overvaluation of WTBS and under-valuation of the other Superstations in the survey.

Initial report at 102–03. There is a theme underlying this critique of MPAA's case that can be summarized as follows: the broad brush that is used to paint the big picture is a poor tool for crafting the details. MPAA's viewer study can paint a statistically useful picture of how much sports programming, for example, the viewing public watches relative to the amount of syndicated programming it watches. But when the same study is used in an effort to determine how much the viewing public watches an individual television program, the accuracy of the results comes into question. Accord 51 FR 12792, 12817 (April 15, 1986)(1983 cable Phase II distribution)("[O]verall reliability [of the Nielsen study] may be somewhat less when the focus is on individual programs.").

How much confidence can we place in the results yielded by MPAA's 82 station sample survey? MPAA does not provide an answer. Section 251.48(f)(4) requires parties submitting studies involving statistical methodology to provide confidence levels for the methodology. Specifically, the rule requires calculation of the standard error for each component of the methodology. 37 CFR 251.48(f)(4)(ii). MPAA acknowledges that it did not comply with the rule, but offers that "the absence of relative error figures has raised no bar to significant reliance on the Nielsen study in [prior] Phase II proceedings." MPAA Reply Findings at 38.

Regardless of what may have sufficed in prior proceedings before the Copyright Royalty Tribunal, there is reason to believe there is considerable relative error in MPAA's results in this proceeding. On cross-examination, Paul Lindstrom stated the following:

Q: In past CRT proceedings, it's my understanding that Nielsen reports have been entered into the record, is that correct?

A: That is correct.

Q: And when Nielsen reports have been entered into the record, they have come with qualifications or characterizations to assist the parties and the Panel understand the data and the relative errors, standard error factors and the like, is that correct?

A: It is correct that we have produced the relative error figures for the category data.

Q: And did you produce relative error figures for the 1997 data?

A: The relative error figures were not produced by us because the final data would not be produced by us. We're basically developing a database which is being passed on to Mr. Larson who then takes it and produces the aggregated report. The standard errors are really relevant on the aggregated data and so we're kind of a mid-product in the process.

Q: Is there any—in Mr. Larson's work would you consult with him so that he makes proper assessment of the data?

A: We have had opportunities at times where we have needed to work together in order to work out issues or to make clear on definitions or categorizations, but on a day to day basis, he's not directing us on how to produce our portion of it and we're not directing him on how to produce his.

Q: But again, in terms of the portion you produced, you basically are asked to produce from your database of data, information regarding quarter hours of viewing to particular stations within a subset of counties that would qualify as distant for purposes of cable copyright rules?

A: That is correct.

Q: And in past proceedings you've aggregated the information into program categories and provided relative errors for that. In this proceeding you have not done that, is that correct?

A: That is correct.

Q: And in past proceedings you have not been asked to address, except in incidental situations specific programs, you have only addressed program categories, is that correct?

A: To the best of my knowledge, yes.

Q: Do you see any difference in Nielsen, just focusing on independent Mr. Larson's responsibilities in terms of the way Nielsen data for purposes of this proceeding, should be viewed—should it be viewed the same or differently from prior data presented where you do not have program categories, but the data is solely addressed to quarter hours of particular stations?

A: If I'm understanding correctly, I'll repeat what I think I hear you say, is that is there a difference in—I imagine you're talking about the accuracy or use [sic] that word, for aggregated category data versus individual program information and if that's the question, then that is absolutely correct. Once the data is beginning to get aggregated, the sampling errors go down and go down substantially.

Q: But conversely, if it's not aggregated, the sampling errors would increase?

A: The sampling errors for any—again, any given program on any given station on any given day so that we're talking about an individual week, individual program, individual station will be subject to huge relative errors.

Tr. 1406–10.

Mr. Lindstrom's testimony underscores the pitfalls of using MPAA's 82 station sample survey to measure household viewing hours for individual programs. When large amounts of programming and household viewing hours are measured, such as in a Phase I proceeding, the aggregation of the measuring data is substantial and the relative error is low. This is what makes the MPAA's sample survey "a good starting off point." However, when the number of programs and household viewing hours are small, the aggregation of the data is minimal and, in the words

[15] Although the Tribunal never described the Nielsen study as a "good starting off point" for Phase II proceedings, it readily accepted Nielsen results that were presented by MPAA in Phase II proceedings. *See, e.g.* 53 FR 7132, 7136 (March 4, 1988)(1985 cable Phase II)("[W]e give great reliance on the Nielsen data")

of Mr. Lindstrom, "subject to huge relative errors." Tr. 1409–10. Of the thousands of programs and billions of viewing hours represented in MPAA's sample survey, IPG's claim only accounts for eight programs and less than 500,000 viewing hours. Although we do not know how large the error factor is for this calculation since MPAA failed to present such information, it is reasonable to presume that it is quite large given that it is drawn from such a small piece of the data. This leads us to the conclusion that, as a methodological approach, it cannot be said that the MPAA sample survey is a "good" starting off point; at best, it is simply "a" starting point.

Having considered MPAA's sample survey conceptually, we now turn to the specifics of its application. As discussed above, the CARP concluded that there were a number of flaws in certain aspects of the sample survey. Although we do not necessarily agree with the number and severity of the CARP's criticisms, there is no need to discuss them here. What matters are what the Register, and ultimately the Librarian, conclude are the flaws in the sample survey, and what impact those flaws have on the usefulness of the MPAA approach.

(i). *Program ownership.* Program ownership is an important and highly contested issue in this proceeding. The issue, however, has centered on the claim of IPG and the programs it has purported to represent in this proceeding. Little attention was given to MPAA's ownership of programs. The CARP requested that MPAA submit program certifications obtained from its member companies, apparently in an effort to resolve issues surrounding certain programs claimed by both MPAA and IPG. MPAA provided these certifications to the CARP as a "courtesy," carefully noting that it was not "legally" required to do so. Tr. 2571–73. MPAA's position is that it is not required to prove its program ownership because it will receive all remaining funds in the 1997 syndicated program royalty pool once IPG's claim is established. While it is true that MPAA will receive all funds less IPG's share, program ownership is nonetheless essential to the application of MPAA's methodology.

As discussed above, MPAA's 82 station sample survey is straightforward in its approach. Calculate the universe of programs in this proceeding, determine the total number of viewing hours for these programs, and then calculate the percentage of the total of viewing hours for IPG programs, yielding IPG's royalty distribution percentage. The so-called "alpha list" submitted by MPAA supposedly contains the household viewing hours for all IPG and all MPAA programs. *Id.* at 28, ¶ 79. The number of IPG programs on this list is known; it is the eight programs of Litton Syndications which the Library has determined are properly attributable to IPG. How do we know that all the remaining programs are properly attributable to MPAA? The answer is that we do not know. MPAA created the alpha list, but it did not provide any testimony to verify the accuracy of the list. It may be that the alpha list contains programs which are not properly represented by MPAA. IPG raises concerns about the status of several program certifications submitted by MPAA, including a number of MPAA claimants for which no certifications were submitted. IPG Proposed Findings at 44–48, ¶¶ 153–169. The CARP allowed the record of this proceeding to remain open after argument had ended to allow submission of additional certifications from MPAA. We cannot determine the sufficiency of these additional filings because there is no testimony to review.

The import of these omissions to the confidence to be placed in MPAA's sample survey is considerable. If MPAA's program ownership cannot be verified, then the total number of household viewing hours for programs in this proceeding cannot be verified. What is even more troubling is that if the alpha list does contain programs which are not properly a part of this proceeding, the benefit of those inclusions inures directly to MPAA because the MPAA's methodology measures IPG's claim as a percentage of the total number of household viewing hours. In other words, the more programs—and consequently the more household viewing hours—that are included in the total, the smaller is IPG's percentage share of that total and consequently the smaller is its royalty share under MPAA's formula.

MPAA points out there is no regulation that requires that it put into evidence program certifications. This is correct. However, MPAA is requesting us to accept its methodology as the means of determining the division of royalties in this proceeding. Unless MPAA can prove that it properly represents all the programs it claims on the alpha list, we cannot verify that MPAA's methodology is being correctly applied. We cannot assume that the copyright owners of all the programs claimed by MPAA are actually represented by MPAA simply because it says so.

(ii). *Zero viewing hours.* The amount of zero viewing hours in MPAA's 82 station sample survey—instances where Nielsen recorded no viewing for a particular program—was especially troubling to the CARP, and the CARP penalized MPAA the most for this anomaly. The CARP made the following finding:

> The record reveals that 68% of the quarter hours measured by Nielsen were attributed with "zero" viewing. Factoring in broadcasts occurring between 2:00–6:00 a.m. for which the MPAA methodology automatically attributes a "zero" value, a total of 73% of the quarter-hour broadcasts occurring on such stations during such measurement period were attributed with "zero" viewing. With one exception, each station in MPAA's study has a significant percentage of measured quarter-hour broadcasts accorded "zero" viewing, ranging from 26% to 96%. Of the 82 stations in the MPAA study, 64 measured by Nielsen recorded no viewing in excess of 50% of their broadcasts, a figure that increases to 74 of the television stations when "zero" viewing for the 2:00–6:00 a.m. daypart is factored in. Eight stations including the New York affiliate of CBS, WCBS–TV, were credited with "zero" viewing during more than 90% of their measured broadcasts.
>
> The only exception to the significant percentages of "zero" viewing are programs broadcast on Superstation WTBS. The Nielsen study credited WTBS, the most retransmitted station during 1997, with only .5% of "zero" viewing. Inexplicably, the Nielsen "special study" credited other superstations with significant distant cable subscribers with large percentages of "zero" viewing. Of note for example, is WGN–TV, the second most retransmitted station with an average of 28 million distant cable subscribers during 1997. Despite its substantial distant subscribership, WGN–TV was credited with "zero" viewing in 52% of its measured broadcasts. Three other "Superstations" were credited with "zero" viewing ranging between 26% and 62% of their measured broadcasts.
>
> We conclude that of the eight deficiencies we have noted in MPAA's distribution royalties,[16] this "zero" viewing hours deficiency is, by far, the most egregious. The evidence offered by MPAA to explain this perceived deficiency in its methodology was less than enlightening. Mr. Lindstrom, who is not a statistician, clarified that attribution of "zero" viewing does not mean that no persons were watching, only that no diaries recorded viewing, and that any suggestion to the Panel that no viewing occurred would reflect a misunderstanding of the data. But then he stated that the "zero" viewing hour information consists of pieces of data that are imprecise; that they are among a series of estimates that may be either high or low; that such individual quarter hour entries have little usefulness; but that they aggregate up to an accurate result, and "the more imprecise

[16] The word "royalties" should probably read "methodology."

bricks you throw in the pile, the more accurate the overall number is going to be."

Accepting this and other testimony of Mr. Lindstrom at face value, we find that it does not even begin to explain the enormous discrepancies described above regarding the crediting of "zero" viewing hours. There is little if any evidence in this record that these high credits of "zero" viewing hours were offset in 1997 by credits of excessively high units of viewing hours. Thus, we are left with a record that more than merely suggests that the MPAA methodology is significantly defective in the manner in which it credits "zero" viewing hours.

Revised report at 8–10 (citations omitted).

MPAA describes the CARP's rationale as follows: "Wow. That many zeros must mean something. We haven't a clue what it is, but there are just too many of them to ignore." MPAA Reply to IPG Petition to Modify Revised Report at 7. MPAA then summarily concludes that "[t]he zeros mean nothing." *Id.* Contrary to MPAA's assertions, we believe that the zeros mean something. They cannot mean "nothing."

MPAA continues to insist that Mr. Lindstrom has adequately explained the high number of zero viewing hours, assuring that the aggregation of the viewing data makes up for the zeros; "the more of these, sort of, imprecise bricks you throw in the pile, the more accurate the overall number is going to be." Tr. 1432. We make a layperson's observation that when you aggregate lots of zeros, the result is still zero. As the CARP noted, almost three-quarters of the quarter hour viewing measured by Nielsen for the stations in MPAA's 82 station sample survey received a zero, despite the fact that Mr. Lindstrom stated that a zero viewing rating did not mean that no viewing was actually taking place, only that it was not measured. Tr. 1424. To us the extraordinarily high level of zero viewing does not mean that the overall results of MPAA's sample survey are more accurate; rather, it means that the sample survey actually measures much less viewing than MPAA suggests.

WTBS is the one station with a modest level of zero viewing; 0.5% according to the CARP. This is not surprising, given the large number (52 million) of distant cable subscribers to WTBS. What is surprising is the number of zero viewing instances for WGN which had an average of 28 million distant cable subscribers during 1997. Over half of the measured WGN broadcasts resulted in zero viewing. Revised report at 9. Even further, three other superstations had zero viewing ranging between 26% and 62% of their measured broadcasts. *Id.* How is it possible that some of the most distributed broadcast stations in the cable industry have such little viewing?

MPAA offers a couple of possible explanations for such discrepancies. For WGN, MPAA suggests that the number of zero viewing instances "could be accounted for by the fact that WGN because WGN (sic) satellite feed to distant cable systems includes programs not part of the station's local broadcast program schedule. These programs are not credited to WGN's distant viewing by Nielsen." MPAA Petition to Modify Revised Report at 17–18. This is a *post hoc* speculation, because there is nothing in the record of this proceeding that demonstrates or even suggests that there are substantial differences between the programs contained on the WGN satellite feed distributed to cable operators and the over-the-air feed of the station. MPAA presented no evidence to support this argument. Furthermore, if MPAA's assertion is true, it demonstrates that certain programming contained on WGN is greatly undervalued because Nielsen is not measuring its viewing.

MPAA also points to Mr. Lindstrom's testimony where he states that there could be "loads of reasons" why there are so many instances of zero viewing. Tr. 1424. Unfortunately, Mr. Lindstrom does not describe the "loads of reasons," other than to suggest that the FCC's network nonduplication rules may have resulted in a considerable number of distant programs being blacked out in local markets, and consequently not measured in the sample survey. Once again, there is no record evidence to support Mr. Lindstrom's suggestion. Ms. Kessler's testimony that she was unconcerned about the number of zero viewing instances is not helpful. Even if one assumes that Mr. Lindstrom's observation is correct, the network nonduplication rules only apply to network stations and do not explain the vast amounts of zero viewing on superstations which are considered to be independent stations under the section 111 license.

The considerable sums of zero viewing, and MPAA's failure to explain it, further undermines the value of the 82 station sample survey. The practical effect of zero viewing is to overvalue those few stations in the survey that received more measured viewing, and thereby overvalue the programs broadcast on those stations. Meanwhile, programs that even MPAA admits are seen by some viewers are given no value whatsoever. In the future, if MPAA continues to present a Nielsen-based viewer methodology, it needs to present convincing evidence, backed by testimony of a statistical expert, that demonstrates the causes for the large amounts of zero viewing and explains in detail the effect of the zero viewing on the reliability of the results of the survey. In addition, MPAA needs to take steps to improve the measurement of broadcasts in the survey to reduce the number of zero viewing hours, thereby increasing the reliability of its study.

(iii) *The 82 station sample.* According to Ms. Kessler, the 82 stations used in MPAA's sample survey were selected because they each had 90,000 or more Form 3[17] distant cable subscribers as identified by Cable Data Corporation. Tr. 242. MPAA chose the 90,000 subscribers as its minimum in selecting its sample of broadcast stations because such criteria "hit virtually all subscribers and accounted for generally all of the money that was paid into the fund during that time." Tr. 243.

During the proceeding, IPG presented testimony that demonstrated that MPAA did not apply the 90,000 subscriber criteria as it claimed. Several broadcast stations with more than 90,000 subscribers were excluded from the survey, and several with less than 90,000 subscribers were included in the survey. IPG written rebuttal at 30–31. In one extreme circumstance, station KDVR was included in the sample survey despite the fact that it had less than 3,000 distant subscribers in 1997. Id. at 31. MPAA did not refute this testimony, nor did it explain why certain stations that satisfied the criteria were excluded, while others that did not were included in the sample survey.

We cannot determine what effect, if any, MPAA's selection of stations had on the results generated by its sample survey. Likewise, we cannot determine from the record whether MPAA's failure to apply its 90,000 subscriber criteria was deliberate, or the result of oversight. What is clear is that MPAA's failure to apply its chosen selection criteria consistently further undermines our confidence in the accuracy of the results generated by its sample survey. In the future, when presenting a methodological survey, MPAA needs to rigorously adhere to its announced standards and parameters for the survey.

(iv). *Interpolation.* As mentioned above, the MPAA sample survey submitted in this Phase II proceeding is similar to the one it has submitted in

[17] "Form 3" refers to the statement of account form used by the Copyright Office in collecting royalty fees under the section 111 cable license. "Form 3" cable systems are the largest systems filing with the Office, having in excess of $292,000 in gross receipts from subscribers for the retransmission of over-the-air broadcast signals.

past Phase I proceedings with one exception. The exception is the use of "straight line," "forward," and "backward" interpolation. The reason for and operation of interpolation is as follows. Nielsen measures viewing of all broadcast stations in the 82 station sample survey for only four months of the year. These measured viewing periods are referred to as the "sweeps." Nielsen also conducts two partial sweep periods, in which some of the 82 stations' broadcasts are measured, but not others.[18] This leaves six full months of unmeasured viewing, plus an additional two months for stations not covered by the partial sweeps periods. If MPAA relied only upon the sweeps and partial sweeps periods to measure viewing of programs, many programs belonging to MPAA members (as well as to IPG) would receive zero household viewing hours because they were broadcast on stations not covered by the sweeps. To compensate for this considerable omission, MPAA developed an interpolation method that allegedly estimates what the viewing might be for these programs had they been included in the sweeps periods.

Briefly described, MPAA's interpolation method makes three measurements in an effort to estimate viewing for programs outside the sweeps period. The first measurement is "straight line" interpolation. In "straight line" interpolation, MPAA ascertained the number of household viewing hours for a specific time period from the two closest sweeps periods, and then took the average of those hours. For example, May and July are sweeps periods, but there is no measured viewing for the month of June. MPAA looked at the May sweeps results and the July sweeps results and applied the average of those results to each corresponding time period in the month of June. Thus, the "straight line" interpolated viewing result for the quarter hour of 10 a.m. to 10:15 a.m. on June 7, 1997, is the average of the measured household viewing hours for that time period for a particular station on May 7, 1997, and July 7, 1997. Tr. 1614–17.

Both "forward" and "backward" interpolation use data obtained from Nielsen meter rankings, as opposed to the data obtained from viewing diaries during the sweeps periods. Meter rankings are different from the diary method in that meter rankings do not capture specific viewing, but rather merely record when a television is on in a given Nielsen household (whether or not anyone is actually watching it) and what station the television is tuned to. Tr.1273–74; 1347–50. "Forward" interpolation uses the sweeps household viewing measurement obtained from the viewing diaries for the period preceding the time frame to be measured and multiplies that by the ratio of Nielsen meter rankings for the preceding period and the period to be measured. In the above example, "forward" interpolation takes the corresponding daypart measurement from the May sweeps period and multiplies that by the Nielsen meter ranking for the same daypart in June divided by the May meter ranking for that daypart. Tr. 1616.

"Backward" interpolation utilizes the same approach as "forward" interpolation, except that it uses the sweep data for the period following the one to be measured, as well as the meter ranking from that period. Again, in the above example, the household viewing hours from the July sweeps period would be multiplied by the June meter ranking for the corresponding daypart divided by the July meter ranking. Tr. 1617. After the three interpolated results have been obtained through "straight line," "forward," and "backward" interpolation, they are divided by three to obtain an average number of household viewing hours for the daypart being examined. *Id.* The purported purpose of "straight line," "forward," and "backward" interpolation is to provide more accuracy to the Nielsen meter rankings through the process of averaging. Tr. 1602–03, 1614–17.

We recognize the purpose of interpolation and appreciate that MPAA is forced to estimate viewing for programs broadcast during non-sweeps periods. Our problem with interpolation is the manner in which MPAA presented it in this proceeding. First, MPAA laid no foundation for a statistical methodology that it was presenting for the first time in a cable distribution proceeding. Marsha Kessler is not a statistician who could testify as to the statistical validity of the interpolation approach; and moreover, she did not compile or review the interpolation data presented by MPAA and, apparently, did not participate in the creation of the methodology or its application. Tr. 1603. The interpolated data was created by Tom Larson of Cable Data Corporation who only presented testimony on the interpolated data when called as a witness by the CARP. In the future if MPAA uses viewing studies to present data on household viewing hours obtained through interpolation, MPAA should present expert testimony as to the statistical validity of the approach, including the confidence intervals for the data.

Second, the testimony establishes that Mr. Larson made the interpolated data calculations, applying "straight line," "forward," and "backward" interpolation "millions of times" in order to generate viewing data for programs broadcast during the 6–8 months of 1997 for which Nielsen did not measure viewing. Tr. 1603. MPAA apparently asks us to trust that Mr. Larson performed these interpolations accurately, because there is nothing in the record that permits verification. This is especially troubling given that more than half of the viewing data presented in MPAA's sample survey is obtained from interpolated results. MPAA should in the future present evidence that permits some verification of the results of interpolated viewing, rather than just total household viewing hours for all programs.

Finally, we note the Copyright Royalty Tribunal's admonition that data that is not specific to programs is unreliable in determining actual viewing of specific programs. 57 FR 15286, 15299 (April 27, 1992) (1989 cable distribution). MPAA's interpolation methodology assigns viewing hours to time slots, not to programs. Tr. 1688–89. It is likely that the viewing assigned these time slots was in many cases derived from programs of a completely different type, perhaps not the same programming category, than the programs measured during the Nielsen sweeps periods. And it is certain that many of the individual programs accounted for by interpolation were not actually transmitted during the period of interpolation. This is particularly troubling given the large amount of total viewing hour data presented by MPAA which was obtained from interpolation.

3. *Relevance of the methodology.* While we agree that viewing of programs is probative in assessing their value in a Phase II proceeding, the results generated by MPAA's sample survey are so unreliable that they cannot support an assessment of IPG's and MPAA's claims in this proceeding. All that can be garnered from the MPAA presentation is that MPAA's claim is large and IPG's is quite small, something that is readily ascertainable from that fact that IPG only represents eight programs in this proceeding. Precisely how small IPG's claim is, which is the task at hand, cannot be ascertained using MPAA's results. Further, MPAA's results cannot be used to establish a zone of reasonableness within which to

[18] The partial sweeps periods are confined, for the most part, to broadcast stations in the top television markets in the country.

place IPG's award because of the high probability of error in MPAA's results. Consequently, we cannot accept MPAA's presentation as providing any basis for the determination of the distribution of royalties in this proceeding.

B. IPG's Presentation

1. Description of the Methodology

IPG's written direct case presents the testimony of Raul Galaz, IPG's president and principal, and the exhibits that he sponsors. As a first-time participant in a cable distribution, IPG did not designate any prior testimony, nor did the CARP request IPG to call additional witnesses.

IPG takes a different approach in attempting to demonstrate the value of programming in this proceeding. Rather than rely on the estimated viewing of a particular program, IPG attempts to determine the value of a program based upon the carriage of the program by cable operators. IPG Proposed Findings at 14, ¶ 42. According to IPG, a cable operator is not interested in the viewer ratings generated by a particular broadcast program it retransmits; rather, it is the overall appeal of all the programs on the broadcast signal that is of value to the operator. Galaz Direct at 6–7. "Overall appeal" is important to the cable operator because the operator attempts to attract as many subscribers as possible to its system. When deciding which stations to retransmit, the operator will attempt to appeal to as wide a subscriber base as possible by providing multiple program opportunities, so-called "niche" programs that appeal to particular tastes.

> In some instances it will be the desire of the cable system operator to exhibit certain sports programming, in other instances it may be the desire to have news programming from a market that is of interest to the cable system operator's market, the desire to increase the amount of children's programming offered to the cable system's subscribers, or the desire to carry more game shows.

Id. at 7. According to IPG, in a compulsory license marketplace it is the overall appeal of a broadcast station to the cable operator that determines the value of the programming on that station.

Since overall appeal of a station is equated with value, the greater the number of subscribers to a station, the greater the value of that station and, consequently, the programming on that station. *Id.* at 8. The relative value of the programs contained on the station is determined, according to IPG, by the time placement of the program and the frequency of its telecast. Thus, a program that is retransmitted in prime-time once a week is of greater value than a program broadcast once a month at 2 o'clock in the morning.

In sum, IPG focuses on four elements to determine program value: (1) The number of distant cable subscribers capable of receiving the program broadcast during 1997; (2) the cable license royalties generated during 1997 that are attributable to stations broadcasting the program; (3) the time placement of the broadcast; and (4) the length of the broadcast. IPG Proposed Findings at 14, ¶ 43.

In order to measure these elements, IPG, like MPAA, surveyed a number of broadcast stations that were retransmitted by cable systems on a distant basis in 1997. IPG sampled 99 stations that were carried on Form 1, 2, and 3 cable systems, and examined all the programs that were broadcast by these stations during 1997. *Id.* at 15, ¶¶ 46–47. Such data comprised approximately 1.1 million logged broadcasts. *Id.* at 15, ¶ 47. IPG then segregated all programming not within the syndicated programming category, leaving only movies and syndicated series.

Because of the parallel between the number of cable subscribers receiving a station and the amount of royalty fees generated by that station, IPG created a factor to weigh the relative significance of any given station and the broadcast of any program on that station. Dubbed the "Station Weight Factor," it was "derived from the concept that the relative significance of any given station should be affected by both (i) the number of distant cable subscribers that could potentially view such station, and (ii) the amount of distant cable retransmission fees generated by such station." Galaz Direct at 11. The Station Weight Factor was created as follows. For each of the 99 sampled stations, IPG summed the figure representing the percentage of subscribers in the survey that received the given station with the figure representing the percentage of total cable royalty fees generated by the 99 sampled stations. This figure was then divided in half. *Id.* The figure generated by this equation equals, according to IPG, the relative significance of each of the 99 sampled stations.

Having determined the relative value of each station—and the corresponding programming on that station—IPG then attempted to determine the relative value of each program on each station by examining the number of broadcasts of the program and its time placement within the broadcast day. In order to do this, IPG created a factor that uses data on anticipated viewership of all persons during time periods of the day (referred to as "dayparts") in order to weigh the relative significance of any given broadcast. Dubbed the "Time Period Weight Factor," it was determined as follows:

> The Time Period Weight Factor was derived from data published by Nielsen Media Research ("Weekly Viewing Daypart" table within the "1998 Report on Television"), reflecting the weekly viewing habits of all persons in 1997. Weekly viewing is stated in terms of the number of television hours viewed during the week, specifies the amount of viewing attributable to specific time periods, allowing allocation amongst such time periods. IPG then determined the "Average Minutes Viewed Per Hour in Viewing Period" (i.e. the "Time Period Weight Factor") in order to apply such Time Period Weight Factor against each and every logged broadcast on the "99 Sample Stations," and according to the period during which such logged broadcast appeared.

Id. at 13.

After ascribing the Station Weight Factor and the Time Period Weight Factor to each broadcast, IPG applied the figures for each broadcast against the length of such broadcast, in order to ascribe a final value to each compensable broadcast. IPG Proposed Findings at 16, ¶ 50.

As a final step to the process, IPG summed the resulting value for its programs and all other programs in its survey and accorded a "Sum Weighted Value" to both these categories of programs. *Id.* at 16, ¶ 51.

In its written direct case, IPG applied its methodology for 43 programs that it believed that it represented in this proceeding. Galaz Direct at 5–6. It determined that IPG-represented programs produced a Sum Weighted Value of 2,3791.7968, as compared to the Sum Weighted Value of 1,369,901.837 for all syndicated broadcasts within the 99 sample station survey. *Id.* at 14. This yielded a percentage of 1.7367519% for IPG programs. Because IPG did not have access to the programs claimed by MPAA, it could not apply its methodology to determine the Sum Weighted Value of MPAA's programs. Consequently, IPG argued that "[t]o the extent that MPAA represents less than 100% of the non-IPG programming appearing on the '99 Sample Stations,' IPG's respective percentage must be adjusted upward." *Id.* at 14–15.

Once proceedings began before the CARP, MPAA produced the program certifications for some, but not all, of its

claimants.[19] Also, during proceedings before the CARP, a number of IPG-claimed programs were eliminated from consideration, either through voluntary dismissal by IPG or as a result of the CARP's rejection of IPG's representation agreements with Jay Ward Productions, Mainframe Entertainment, and Scholastic Productions. IPG Proposed Findings at 53, ¶ 2. IPG then recalculated its own share, and that of MPAA's, and determined that its programs accounted for 0.881% of the aggregated Sum Weighted Value of all programs claimed in this proceeding.

Although IPG's methodology yielded 0.881% for its claimed programs, it argued that it was nonetheless entitled to 2% of the royalty pool. IPG justified the 2% figure based upon certain alleged failures, abuses, and shortcomings on MPAA's part, including: (1) Failure to produce program certifications for 33 of MPAA's claimants, and production of 6 certifications that were not properly authorized; (2) failure to establish entitlement to 1,100 programs that were not, according to a 1986 Advisory Opinion of the Copyright Royalty Tribunal, eligible for compensation in the syndicated programming category; (3) abuse of the discovery process by failing to produce documents underlying its methodology in contravention to Library and CARP discovery orders; and (4) serious shortcomings in the application of MPAA's distribution methodology. *Id.* at pp. 52–55.

2. Validity of the Methodology

This marks the first time that IPG has appeared in a cable royalty distribution proceeding, and the first time its distribution methodology has been presented. As such, we do not have the benefit of prior consideration or acceptance of the IPG methodology by either the Copyright Royalty Tribunal or a CARP, other than the CARP's opinion in this proceeding. We must consider IPG's methodology from a theoretical point of view, as well as examine its particular application to this Phase II proceeding.

At the outset, we note that IPG's methodology attempts to blend two approaches that have been presented to the Tribunal and the CARPs. The first part of the methodology, the Station Weight Factor, is a fee generation approach in that it considers the royalty fees paid by cable systems during 1997 for the 99 broadcast stations used in the IPG survey. Each of the stations in the 99 station sample survey is ranked from highest to lowest depending upon the amount of fees the station generated for the 1997 royalty pool. IPG submits that the Station Weight Factor is relevant to the marketplace value of broadcast programs because cable systems' decisions to retransmit a particular broadcast station are "based on the "overall appeal" of the retransmitted station and its ability to generate additional cable system subscribers, not the ratings of a particular program appearing on the retransmitted station." IPG Proposed Findings at 14–15, ¶ 45.

IPG's focus on the value of distant signals to cable operators recalls the Bortz survey that has been presented for many years at Phase I in cable royalty distribution proceedings. The Bortz survey attempts to measure the value of different categories of programming appearing on retransmitted broadcast signals by presenting to persons from cable companies a hypothetical programming budget for a given year, and then asking how much value they place on different kinds of programming (sports, movies, syndicated series, etc.) in compiling their program schedule. 57 FR 15286, 15292 (April 27, 1992). The more value placed on a program category, the more cable Phase I royalties it should receive, according to proponents of the Bortz survey.

The focus on value to the cable operator has been endorsed by both the Tribunal and the CARPs as one of the ways to assess marketplace value, and the results of the Bortz survey have received credit in Phase I proceedings. *See, e.g.* 57 FR 15286, 15301 (April 27, 1992)(1989 cable Phase I) IPG's Station Weight Factor attempts to ride the coattails of the Bortz survey's acceptance by ranking the "overall appeal" of stations as an expression of the value of the programming broadcast on those stations. While it must be true that a station such as WTBS, for example, has a significant "overall appeal" to cable operators by virtue of the number of cable systems that retransmit it, the "overall appeal" does not translate well to a Phase II proceeding dealing with one program category. It is quite possible, and perhaps likely, that the "overall appeal" of stations in the 99 station sample survey is based upon programming that is not in issue in this proceeding. Thus, the reason that so many cable operators carry WTBS may have more to do with Atlanta Braves baseball and Atlanta Hawks basketball than it does with syndicated series and movies. IPG failed to present any evidence that established a clear nexus between the syndicated programming category and the "overall appeal" of the 99 broadcast stations subjected to the Station Weight Factor.

This is a significant omission which raises serious concerns regarding the validity of IPG's methodology. The Copyright Royalty Tribunal has rejected estimating techniques that are not tied to programming categories because of their inherent unreliability. 57 FR at 15299 (1989 Phase I cable distribution). In the absence of convincing evidence that demonstrates that the ranking of the 99 stations is based upon the syndicated programming category, and not some other, the validity of the Station Weight Factor is not established

The second element of IPG's methodology is the Time Period Weight Factor. The Time Period Weight Factor uses data from the 1998 Report on Television published by Nielsen. Galaz Direct at 13. The Report on Television provides viewing estimates for early morning (M–F 7–10 a.m.), daytime (M–F 10 a.m.–4 p.m.), prime time (M=—at 8–11 p.m. and Sun. 7–11 p.m.), and late night (11:30 p.m.–1 a.m.) dayparts. For all other dayparts, weekly viewing was extrapolated from the data in the above categories and lumped into the "All Other" category. IPG Exhibit H. These viewing estimates enable IPG to rank the dayparts. Like the ranking of the 99 stations in IPG's sample survey, the ranking of dayparts is not tied to programming. The Nielsen viewing estimates for these dayparts are drawn from viewing of all program categories. In fact, the estimates apparently also include viewing of local stations over-the-air and on cable, cable networks, and VCR recording of programming, which are completely outside the scope of the section 111 license. Tr. 1369. As with the Station Weight Factor, the Time Period Weight Factor is not tied to programming. IPG did not present any testimony establishing a link between syndicated programming and the ranking accorded to dayparts by Nielsen. Unless such link is established, the relevance of the Time Period Weight Factor is in question.

This is our evaluation of the theory of IPG's methodology. In addition, there are specific concerns about its application in this proceeding with respect to the use of daypart data obtained from Nielsen. While we acknowledge that obtaining specific daypart data from Nielsen is costly, the dayparts culled by IPG from the 1998 Report on Television are far too broad because they ignore variations in viewing within dayparts. For example, IPG's methodology assigns the same value to any program broadcast within the 1 a.m. to 7 a.m. daypart. MPAA

[19] MPAA submitted additional certifications to the CARP prior to closing arguments in the case. Tr. 2576.

points out that Nielsen estimates that household viewing falls from 18.9% to 8.2% at 4:30 a.m. and then begins to rise back to 19.7% in the 6:30 a.m. to 7 a.m. half hour. MPAA Proposed Findings at 60, ¶ 261. Thus, a program broadcast at 4:30 a.m. gets the same value under IPG's methodology as a program broadcast at 6:30 a.m., even though it has less than half the viewers. Even within IPG's own construct, which attempts to assign value based on relative viewing, this result is illogical. Dayparts must be broken down into smaller increments before the Time Period Weight Factor could be given any credence.

In addition, IPG's extrapolated daypart data, the "All Other" category, is plainly overweighted. For example, IPG applies the weight applicable to the "All Other" category to the 1 a.m. to 7 a.m. daypart. This is the same weight factor that is applied to programming broadcast between 4 p.m. and 8 p.m., where viewing, according to Nielsen, is considerably higher than in the 1 a.m. to 7 a.m. time frame. The result is that a program broadcast at 3 a.m. is of equal value under IPG's methodology as a program broadcast at 7:30 p.m.[20] Further, the 1998 Report on Television contains viewing estimates for the Saturday 7 a.m. to 1 p.m. daypart and the Sunday 1 p.m. to 7 p.m. daypart, neither of which IPG used in its methodology. Instead, IPG applied the "All Other" category to these time periods. As the CARP correctly observed, the value of the "All Other Category" is overstated, thereby inflating the value of IPG's claim. Revised Report at 14.

3. *Relevance of the methodology.* As with MPAA's presentation, we conclude that the results of IPG's presentation are so unreliable that they cannot be used as a basis for determining the distribution of royalties in this proceeding. The theory of IPG's case lacks statistical foundation, and places value on programs unconnected to their actual viewership. The evidence demonstrates that IPG's methodology overstates the value of its claim, although by how much cannot be determined. Given the lack of reliability of the results, IPG's presentation cannot be used as a basis for the distribution of royalties in this proceeding.

Determination

1. *Remand.* Having determined that the results presented by MPAA and IPG are wholly unreliable, we examined the record to determine if there is any evidence sufficient to base a distribution of royalties. As part of its distribution methodology, the CARP examined the number of rebroadcasts of programs and the airtime of programs contained in both the 82 sample stations presented by MPAA and the 99 stations presented by IPG. The CARP examined this data because it was the only data common to both MPAA's and IPG's presentations. Revised report at 17. This gave an indication of the relative size of MPAA's and IPG's claims; i.e. that MPAA's was large and IPG's small. *Id.* at 18. The CARP then turned to the methodologies presented by the parties and used them as a means of creating final distribution percentages.

We determine that the number of rebroadcasts and airtime of programs contained in the 82 station and 99 station sample surveys cannot form the basis of a distribution. All that data demonstrates is that MPAA's programming dominated the broadcast marketplace, something that is already known. The number of times a program is broadcast and the amount of time it is on the air is no indication of the marketplace value of the program. While the number of times a program is broadcast might intuitively suggest that it is of more value, the opposite is often true. Programs which garner low syndication fees are often broadcast by television stations many times because the rights are cheap. And other programs, such as motion pictures, may be broadcast relatively few times because the rights are expensive, but they are nonetheless of greater marketplace value. Number of broadcasts and airtime are therefore not the answer.

What then is the answer? We determine that the record of this proceeding is insufficient on which to base a distribution determination. The record does not permit us to assess what is the zone of reasonableness for the distribution awards, let alone determine the awards themselves. Given the lack of reliability of MPAA's and IPG's presentations, crafting awards from the current record would constitute arbitrary action.

We conclude that a distribution of royalties cannot be made based on the current record. Consequently, this case must be remanded to a new CARP for a new proceeding under chapter 8 of the Copyright Act.

2. *New proceeding.* In the new proceeding, the parties will be required to submit new written direct cases and present evidence that takes into account the concerns expressed in this Order, with the new CARP rendering its determination based upon the new record. All procedural and substantive requirements for a CARP proceeding will apply to the new proceeding.

Although the parties will able to present new cases and new evidence in the new proceeding, there are two matters that have been decided. As discussed above, the Librarian has ruled that IPG represents Litton Syndications for distribution of 1997 cable royalties, and no other claimant. Consequently, in the new proceeding, IPG is barred from relitigating whether it represents other claimants. The Librarian also determined that Litton's claim consists of at least 8 programs, and listed them in the June 5, 2001 Order. This part of Litton's claim is decided and may not be relitigated. Whether there are additional programs that should be credited to Litton's claim (such as *Dream Big* and *Dramatic Moments in Black Sports History*) may be addressed in the new proceeding. Likewise, all other matters as to program ownership, and the proper division of the royalties, are open to consideration in the new proceeding.

The Library will issue a scheduling order for the new proceeding once the arrangements have been made.

Order of the Librarian

Having duly considered the recommendation of the Register of Copyrights regarding the initial report and the revised report of the CARP in the above-captioned proceeding, the Librarian determines the following. First, the Librarian has accepted the recommendation of the Register to reject the initial report of the CARP and remand the proceeding to the CARP with instructions for further action. This was done in the June 5, 2001, Order in this proceeding, and the Librarian incorporates that Order as a part of his final determination. *See* Appendix A.

Second, the Librarian accepts the recommendation of the Register to reject the revised report of the CARP. Third, the Librarian accepts the recommendation of the Register to remand this proceeding to a new CARP for a new proceeding to determine the proper distribution of 1997 cable royalties between MPAA and IPG. The Library will issue a scheduling order for the new CARP proceeding once arrangements have been made.

[20] There is record evidence that shows that as much as 30% of IPG's originally claimed programs were broadcast between 1 a.m. and 7 a.m. Tr. 1035–37.

Dated: December 14, 2001.

Marybeth Peters,

Register of Copyrights.

APPENDIX A—LIBRARIAN'S REMAND ORDER DATED JUNE 5, 2001

[Docket No. 2002–2 CARP CD 93–97]

In the Matter of Distribution of 1993, 1994, 1995, 1996 and 1997 Cable Royalty Funds

Order

On April 16, 2001, the Librarian of Congress received the report of the Copyright Arbitration Royalty Panel (CARP) in the above-captioned proceeding. Both the Motion Picture Association of America (MPAA) and the Independent Producers Group (IPG), the two litigants in this proceeding, have filed their petitions to modify and/or set aside the determination of the CARP, and their replies to those petitions.

After a review of the report and examination of the record in this proceeding, the Register recommends that the Librarian reject the decision of the CARP, and remand the case to the CARP for modification of the decision. The Register concludes that the CARP acted arbitrarily in three ways. First, the CARP did not follow the decisional guidelines and intent of the June 22, 2000, Order issued in this proceeding which directed the CARP to dismiss any claimants listed in exhibit D of IPG's written direct case that did not have a written representation agreement with Worldwide Subsidy Group on or before July 31, 1998.

Second, the CARP arbitrarily included two programs—*Critter Gitters* and *Bloopy's Buddies*—in the claim of Litton Syndications, Inc. (represented by IPG) when IPG did not introduce any evidence as to the value of those programs. In addition, the CARP arbitrarily assigned the program *Dramatic Moments in Black Sports History* to IPG without adequate explanation of its decision.

Third, the CARP acted arbitrarily in awarding 0.5% of the 1997 cable royalties to IPG, and the remaining 99.5% of the royalties to MPAA, because it did not provide any explanation of the methodology or analysis it used to arrive at these numbers.

A full discussion of the Register's reasons for these conclusions shall appear in the final order in this proceeding published in the **Federal Register**.

Wherefore, the Register recommends that the Librarian reject the CARP's report and remand to the CARP to take the following actions in modifying its report:

1. That the CARP award royalties to IPG only on the claims of Litton Syndications and not award any royalties to IPG based upon the other claimants in exhibit D of IPG's written direct case;

2. That the CARP credit Litton with only the following programs: *Algo's Factory; Jack Hanna's Animal Adventures; Harvey Penick's Golf Lesson; Mom USA; Nprint; Sophisticated Gents; Just Imagine* and *The Sports Bar;*

3. That the CARP explain its reasons for crediting *Dramatic Moments in Black Sports History* to Litton's claim; and, if it concludes that its initial decision was correct, add the program to the list contained in #2;

4. That the CARP enter a new distribution percentage for IPG, based only on the claim of Litton and the programs listed in #2 and, if appropriate, #3, and allocate the remainder of the royalties to MPAA; and

5. That the CARP fully explain its reasons and methodology for the distribution percentages it assigns to IPG and MPAA.

The Register further recommends that the CARP be given until June 20, 2001, to report its modified decision to the Librarian and that section 251.55 of the rules, 37 C.F.R., apply to the CARP's modified report, except that the periods for petitions and replies be shortened from 14 days to 7 days for petitions, and from 14 days to 5 days for replies, due to the proximity of the time period for issuance of the Librarian's final order in this proceeding.

So recommended.

Dated: June 5, 2001.

Marybeth Peters,

Register of Copyrights.

So Ordered.

James H. Billington,

The Librarian of Congress.

[FR Doc. 01–31607 Filed 12–21–01; 8:45 am]

BILLING CODE 1410–33–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Institute for Environmental Conflict Resolution—Program Evaluation Instruments: Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, U.S. Institute for Environmental Conflict Resolution.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the U.S. Institute for Environmental Conflict Resolution (the U.S. Institute), part of the Morris K. Udall Foundation, is planning to submit 18 proposed Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Each of these 18 ICRs is a new collection request; they are being consolidated under a single filing to provide a more coherent picture of information collection activities by the U.S. Institute. The proposed information collection is expected to neither have a significant economic impact on respondents, nor affect a substantial number of small entities. The average cost (in lost time) per respondent is estimated to be $4.91.

Before submitting the ICRs to OMB for review and approval, the U.S. Institute is soliciting comments on specific aspects of the information collection as described at the beginning of the section labeled "Supplementary Information."

DATES: Comments must be submitted on or before February 25, 2002.

ADDRESSES: U.S. Institute for Environmental Conflict Resolution, 110 South Church Avenue, Suite 3350, Tucson, Arizona 85701. Worldwide web: www.ecr.gov.

FOR FURTHER INFORMATION CONTACT: David P. Bernard, Associate Director, U.S. Institute for Environmental Conflict Resolution, 110 South Church Avenue, Suite 3350, Tucson, Arizona 85701, Fax: 520–670–5530, Phone: 520–670–5299, E-mail: *bernard@ecr.gov*.

SUPPLEMENTARY INFORMATION:

OVERVIEW

To comply with the Government Performance and Results Act (GPRA) (Pub. L. 103–62), the U.S. Institute for Environmental Conflict Resolution, as part of the Morris K. Udall Foundation, is required to produce, each year, an Annual Performance Plan, linked directly to the goals and objectives outlined in the Institute's five-year Strategic Plan. The U.S. Institute is also required to produce an Annual Performance Report, evaluating progress toward achieving its performance commitments. The U.S. Institute is currently developing a program evaluation system to gather and analyze information needed to assist in producing its Annual Performance Report.

The U.S. Institute is committed to establishing, achieving, and maintaining a national standard of excellence in all its programs, products, and services. To do so, the U.S. Institute requires high quality information concerning effectiveness of its various initiatives. Systematic and ongoing monitoring of program outcomes will allow the U.S. Institute to perform a variety of tasks, including giving individual project and program managers, as well as the Institute's management, the ability to accurately assess and report on program and project achievements. The new evaluation system has been carefully designed to support efficient and economical generation, analysis and use of this much-needed information, with an emphasis on program feedback, learning and improvement.

As part of the program evaluation system, the U.S. Institute intends to collect specific information from participants in, and users of, several of its programs and services. Specifically, five of the Institute's programs and services are the subject of this Federal

Notice: (1) Environmental conflict assessment services; (2) environmental conflict resolution services; (3) the National Roster of Environmental Dispute Resolution and Consensus Building Professionals; (4) environmental conflict resolution training courses and workshops; and (5) meeting facilitation. Evaluations will mainly involve administering questionnaires to parties and professionals engaged in U.S. Institute projects, as well as members and users of the National Roster. Responses by members of the public to the Institute's request for information (i.e., questionnaires) will be voluntary and anonymous.

The U.S. Institute is exploring with several other federal agencies how its program evaluation system can be of use to their own program evaluation needs. The broader use of similar data collection instruments and consistent data collection and analysis techniques may provide cost savings to other agencies and accelerate the rate at which each agency reviews and improves effective performance of conflict resolution processes.

Key Issues

The U.S. Institute would appreciate receiving comments that can be used to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the U.S. Institute, including whether the information will have practical utility;

(ii) Determine whether the nature and extent of the proposed level of anonymity for those from whom the U.S. Institute will be collecting information is adequate and appropriate;

(iii) Evaluate the accuracy of the U.S. Institute's estimate of the burden associated with the proposed information collection activities;

(iv) Enhance the quality, utility, and clarity of the information to be collected;

(v) Minimize the burden of the information collection on those who are to respond, including suggestions concerning use of automated collection techniques or other forms of information technology (e.g., allowing electronic submission of responses).

As used in this document, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal Agency. This includes 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 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.

Technical Details

The upcoming information collection request by the U.S. Institute is one step in the process for establishing an operational program evaluation system. Development of the system formally began in 1999, as part of a broader collaborative program evaluation initiative co-sponsored by the U.S. Institute and the Policy Consensus Initiative (PCI), involving the University of Arizona's Udall Center for Studies in Public Policy, Indiana University's School for Public and Environmental Affairs, the Indiana Conflict Resolution Institute, and Syracuse University's Maxwell School for Citizenship and Public Affairs. After extensive preparation, a two-day workshop on program evaluation was held with several federal and state program managers, academic researchers, and practitioners. Subsequently, the U.S. Institute and PCI began working together with two state agencies that administer public policy and environmental dispute resolution programs; the Massachusetts Office of Dispute Resolution and the Oregon Dispute Resolution Commission. With PCI's support and coordination and contracted program evaluation consultants, the U.S. Institute and these state programs have been developing their program evaluation systems. These programs have now completed pilot testing and are in the early stages of implementation. This collaborative effort has provided essential guidance, critical review and confirmation for the U.S. Institute's approach to its program evaluation system.

Technical details of the Institute's evolving program evaluation system are contained in a December 2001 draft report entitled Applying Program Evaluation Methods at the U.S. Institute for Environmental Conflict Resolution. Paper copies of this report can be obtained by contacting the Institute; an electronic copy can be downloaded from the Institute's website: *www.ecr.gov/techdoc.htm.*

One of the most important design criteria for any program evaluation system is its validity—ensuring that reported results will be trustworthy and accurately portray the level of success that individual programs and projects achieved in meeting intended outcomes. For each of the Institute's five program and service areas an operational diagram was composed that systematically registers all intended program outcomes and each of the factors believed by current program theory to affect those outcomes. These five outcome diagrams were then used as the framework for formulating the detailed questionnaires that will be used to gather information for evaluating whether intended outcomes were achieved, and for providing diagnostic insights useful in analyzing what factors most influenced the outcomes.

Primary audiences for results from the U.S. Institute's program evaluation system include members of the U.S. Institute program staff and management, which will use the information in decision-making regarding program operation and directions, and oversight bodies such as the Udall Foundation Board of Trustees and OMB. Secondary audiences will likely include other federal agencies, practitioners in the field, researchers, and members of the public. The U.S. Institute will use the information and analysis generated by its program evaluation system for a variety of purposes, including: ongoing improvements to design and operation of projects and programs; periodic performance reporting; annual evaluations of personnel performance; and learning about what factors most influence successful outcomes in specific situations. Ultimately, it is expected that this information will aid further development of best practices for the field of environmental conflict resolution (ECR).

A. List of ICRs Planned To Be Submitted

The U.S. Institute is planning to submit 18 ICRs to OMB, corresponding to 18 individual questionnaires that will be administered to those involved in environmental conflict resolution (ECR) activities connected with U.S. Institute services and programs. Questionnaires will be used to gather information concerning the effectiveness of the ECR services and programs provided by or on behalf of the U.S. Institute. As noted above, consideration is being given to the use of these questionnaires by other agencies for ECR activities, which may or may not involve the U.S. Institute. In the listing below, the questionnaires are organized into five activity areas, indicating the recipients of the questionnaires and, in parentheses, the frequency of administration. It should be noted that additional questionnaires

will be administered to U.S. Institute project managers, but OMB clearance is not required for questionnaires directed to federal employees.

Environmental Conflict Assessment
(1) Assessment—Initiating Organization, at the conclusion of the process (once)
(2) Assessment—Neutral, at the conclusion of the process (once)
Environmental Conflict Resolution Services
(3) ECR Process—Parties, at the conclusion of the process (once)
(4) ECR Process—Parties, subsequent to the conclusion of the process (once)
(5) ECR Process—Parties' Attorneys, subsequent to the conclusion of the process (mediation only) (once)
(6) ECR Process—Neutral (facilitators and mediators) at the conclusion of the process (once)
(7) ECR Process—Neutral case summary at conclusion of the process (once)
National Roster of Environmental Dispute Resolution and Consensus-Building Professionals
(8) National Roster—Members (once, upon acceptance to the roster)
(9) National Roster—Members (annual follow-up)
(10) National Roster—Users (once, upon initial use of WWW site)
(11) National Roster-Users (once, per Roster search)
(12) National Roster—Users requesting a referral (once, per request)
Environmental Conflict Resolution Training Courses and Workshops
(13) Training—Participants, prior to start (once)
(14) Training—Participants, at the conclusion (once)
(15) Training—Participants, follow-up (once, six months after training)
(16) Training—Instructor, prior to start (once)
(17) Training—Instructor, at the conclusion (once)
Meeting Facilitation
(18) Meeting Facilitation—Meeting Attendees, at the conclusion of the process (once)

B. Contact Individual for ICRs

David P. Bernard, Associate Director, U.S. Institute for Environmental Conflict Resolution, 110 South Church Avenue, Suite 3350, Tucson, Arizona 85701, Fax: 520–670–5530, Phone: 520–670–5299, E-mail: *bernard@ecr.gov.*

C. Confidentiality and Access to Information

To encourage candor and responsiveness on the part of those completing the questionnaires, the U.S. Institute intends to report information obtained from questionnaires only in the aggregate. The U.S. Institute intends to withhold the names of respondents and individuals named in responses. Such information regarding individuals is exempt from disclosure under the Freedom of Information Act (FOIA), pursuant to exemption (b)(6) (5 U.S.C. Section 552(b)(6), as the public interest in disclosure of that information would not outweigh the privacy interests of the individuals. Therefore, respondents will be afforded anonymity. Furthermore, no substantive case-specific information that might be confidential under statute, court order or rules, or agreement of the parties will be sought.

The U.S. Institute is committed to providing agencies, researchers and the public with information on the effectiveness of environmental conflict resolution (ECR) and the performance of the U.S. Institute's programs and services. Access to such useful information will be facilitated to the extent possible. The U.S. Institute is also committed, however, to managing the collection and reporting of data so as not to interfere with any ongoing ECR processes or the subsequent implementation of agreements. Case specific data will not be released until an appropriate time period has passed following conclusion of the case: such time period to be determined. FOIA requests will be evaluated on a case-by-case basis.

D. Information on Individual ICRs

Environmental Conflict Assessment

The U.S. Institute consistently encourages the use of conflict or situation assessments. Generally, such assessments are conducted by a neutral party and include a series of confidential structured interviews in person or on the telephone with individuals or groups of parties. Through such assessments, neutrals identify and clarify key issues and parties, and assess the appropriateness of an ECR process and its potential for helping the parties reach agreement. Assessment reports seek to clarify and communicate in a neutral manner the issues and concerns of all parties, and commonly conclude with process design recommendations intended to provide the parties with one or more options for effectively collaborating in inventing a solution to their conflict.

(1) Assessment—Initiating Organization Questionnaire; New collection request; Abstract: Immediately following conclusion of a conflict assessment process, the initiating agency or organization(s) will be surveyed once via questionnaire to determine their views on a variety of issues. Topics to be investigated include: was the conflict assessment approach well suited to the nature of the issues in conflict; was the selected neutral appropriate for the assignment; were all key parties consulted, and, were all key issues and alternatives properly identified and considered? The voluntary questionnaire contains 15 simple questions, many of which require respondents to only provide a fill-in-the blank rating number. Information from the questionnaire will permit U.S. Institute staff to not only evaluate performance for specific projects, but also improve the design of future assessment projects. *Affected Entities:* Entities potentially affected by this action are individuals in organizations that participate in a conflict assessment conducted by U.S. Institute staff or contractors. *Burden Statement:* It is estimated that the annual national public burden and associated costs and will be approximately 15 hours and $405 respectively. These values were calculated assuming that on average (a) respondents require 12 minutes per questionnaire (b) there are 1.5 respondents per project (c) respondents are surveyed only once, and (d) there will be 50 assessments conducted each year. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $27 hr.

(2) Assessment—Neutral Questionnaire; New collection request; Abstract: Immediately following conclusion of a conflict assessment, the selected neutral(s) will be surveyed once via questionnaire to determine their views on a variety of issues. Topics to be investigated include: was the conflict assessment approach well suited to the nature of the issues in conflict; were all key parties consulted, and, were all key issues and alternatives properly identified and considered? In most cases, it will be specified in the neutral's contract that they be required to complete the questionnaire. The neutral's questionnaire contains 14 simple questions, many of which require respondents only to provide a fill-in-the blank rating number. Information from the questionnaire will permit U.S. Institute staff to not only evaluate performance for the neutral, but also improve the process for selecting appropriate neutrals for future assessment projects. Affected Entities: Entities potentially affected by this action are neutral ECR practitioners who

either are staff members of the U.S. Institute or have been contracted by the Institute. Burden Statement: It is estimated that the annual national public burden and associated costs and will be approximately 10.5 hours and $378, respectively. These values were calculated assuming that on average: (a) neutrals require 10 minutes per questionnaire (b) there are 1.25 respondents per project (c) respondents are surveyed only once, and (d) there will be 50 assessments conducted each year. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $36 hr.

Environmental Conflict Resolution Services

A variety of non-adversarial, participatory processes are available as adjuncts or alternatives to conventional forums for resolving environmental disputes or reaching environmental agreements. Such environmental conflict resolution (ECR) processes range broadly depending on the nature of the dispute and the parties involved as well as their context (for example, early on in planning processes, when seeking administrative relief, or during litigation). Under the right circumstances, a well-designed ECR process facilitated or mediated by the right neutral can effectively assist parties in reaching agreement on plans, proposals, and recommendations to settle their dispute. ECR processes can also result in improvement in relationships among the parties, and increase their individual and collective capacity to manage or resolve future conflicts. The following survey instruments have been designed for use across the full range of ECR, be they collaborative agreement-seeking processes or environmental mediation.

(3) ECR Process—Parties Questionnaire; New collection request; Abstract: Immediately following conclusion of an ECR process, the parties that have been involved will be surveyed once, via questionnaire, to determine their views on a variety of issues. Topics to be investigated include: are the parties now more likely to consider collaborative processes in the future; were the "right" parties effectively engaged throughout the process; was there an appropriate scope and design for the ECR process; did the parties have the capacity to engage in the process; was the neutral (or team) that guided the process appropriate; and did all parties have access to the best available and relevant information? The voluntary questionnaire contains 29 questions, many of which require respondents only to fill-in-the blank with their level of agreement or a rating number. Information from the questionnaire will permit U.S. Institute staff to evaluate if the intended ECR outcomes were achieved, and if so or not, why. Affected Entities: Entities potentially affected by this action are parties to ECR process conducted by, on behalf of, the U.S. Institute. Burden Statement: It is estimated that the annual national public burden and associated costs and will be approximately 400 hours and $10,800, respectively. These values were calculated assuming that on average: (a) parties require 12 minutes per questionnaire (b) there are 20 respondents per project (c) respondents are surveyed only once, and (d) there will be 100 ECR projects conducted each year. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $27 hr.

(4) ECR Process—Parties Follow-up Questionnaire; New collection request; Abstract: To gain information concerning the loner-term effectiveness of the ECR process, an additional questionnaire will be administered to the parties at a future date following conclusion of the process. Topics to be examined include: do all parties perceive an improvement in their collective relationships; do the parties consider the ECR process to have been fair and open; are the parties satisfied with services of the U.S. Institute; did the decision makers agree to implement the plans, proposals, recommendations or settlement agreement; and—if implemented—did the solution endure changes in conditions and unanticipated events. The voluntary questionnaire contains 13 questions, many of which require respondents to only fill-in-the blank with their level of agreement or a rating number. Information from the questionnaire will permit U.S. Institute staff to evaluate if the ECR outcomes were sustainable, and if not, why. Affected Entities: Entities potentially affected by this action are parties to ECR process conducted by, on behalf of, the U.S. Institute. Burden Statement: It is estimated that the annual national public burden and associated costs and will be approximately 333 hours and $9,000, respectively. These values were calculated assuming that on average: (a) parties require 10 minutes per questionnaire (b) there are 20 respondents per project (c) respondents are surveyed only once, and (d) there will be 100 ECR projects conducted each year. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $27 hr.

(5) ECR Process—Parties' Attorneys Questionnaire (mediation only); New collection request; Abstract: Immediately following conclusion of an ECR mediation process, attorneys (if any) who represented parties to the dispute will be surveyed once, via questionnaire, to determine their views on a variety of issues. Topics to be investigated are similar to those in questionnaire (4), above, except this instrument places greater emphasis on gaining a legal perspective. This voluntary questionnaire contains 38 questions, and only a few of these require other than a simple fill-in-the blank response. Information from this questionnaire will permit U.S. Institute staff to evaluate if the intended ECR outcomes were achieved, and if so or not, why. Affected Entities: Entities potentially affected by this action are parties to ECR process conducted by, on behalf of, the U.S. Institute. Burden Statement: It is estimated that the annual national public burden and associated costs and will be approximately 9 hours and $369, respectively. These values were calculated assuming that on average: (a) attorneys require 12 minutes per questionnaire; (b) there are 0.45 respondents per project (c) respondents are surveyed only once, and (d) there will be 100 ECR projects conducted each year. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $41 hr.

(6) ECR Process—Neutral (facilitators and mediators) Questionnaire; New collection request; Abstract: Immediately following conclusion of an environmental conflict resolution process, the neutral(s) will be surveyed once, via questionnaire, to determine their views on a variety of issues. Topics to be investigated include: was the ECR approach well suited to the nature of the issues in conflict; were all key parties consulted, and, were all key issues and alternatives properly identified and considered? In most cases, it will be specified in the neutral's contract that they be required to complete the questionnaire. The neutral's questionnaire contains 44 questions. Information from this questionnaire will permit U.S. Institute staff to evaluate if the intended ECR outcomes were achieved, and if so or not, why. Affected Entities: Entities potentially affected by this action are neutrals in ECR processes conducted by, on behalf of, the U.S. Institute. Burden Statement: It is estimated that the annual national

public burden and associated costs and will be approximately 62.5 hours and $2,250, respectively. These values were calculated assuming that on average: (a) neutrals will require minutes per questionnaire; (b) there are 1.25 respondents per project (c) respondents are surveyed only once, and (d) there will be 100 ECR projects conducted each year. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $36 hr.

(7) ECR Process—Neutral case summary; New collection request; Abstract: Immediately following conclusion of an environmental conflict resolution process, the neutral(s) will be asked to provide answers to four questions the answers to which will help the U.S. Institute characterize the controversy. Among other things, the questions explore the benefits from the collaborative process, and insights concerning which controversies are most appropriate for collaborative processes, along with suggestions regarding the design and implementation of ECR processes. In those cases managed by the U.S. Institute, it will be specified in the neutral's contract that they be required to provide answers to these questions. Information from this questionnaire will permit U.S. Institute staff to evaluate if the intended ECR outcomes were achieved, and if so or not, why. Affected Entities: Entities potentially affected by this action are neutrals in ECR processes conducted by, on behalf of, the U.S. Institute. Burden Statement: It is estimated that the annual national public burden and associated costs and will be approximately 31.25 hours and $1,125, respectively. These values were calculated assuming that on average: (a) neutrals will require 15 minutes per questionnaire; (b) there are 1.25 respondents per project (c) respondents are surveyed only once, and (d) there will be 100 ECR projects conducted each year. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $36 hr.

National Roster of Environmental Dispute Resolution and Consensus-Building Professionals

The U.S. Institute has a full-time Roster Manager who supervises a Roster Program consisting of two main components: design and operation of the National Roster of Environmental Dispute Resolution and Consensus Building Professionals, and overseeing the associated referral system. Membership on the roster remains open at all times. Potential members apply on line and are required to provide information that demonstrates a level of training and experience adequate to meet specific, objective entry criteria. First constituted in February 2000, the roster currently includes over 180 members, nationwide. When making referrals and locating neutrals for sub-contracting, the U.S. Institute uses the roster as a primary source to find experienced individuals, particularly in the locale of the project or dispute (as required by the Institute's enabling legislation). Currently, dispute resolutions specialists at the U.S. EPA have direct access to the roster and use it to assist them in finding practitioners. Other federal agencies, and the public, will soon have direct access to the roster via the WWW. When requested by any party to a qualifying dispute, the Roster Manager also provides advice and assistance regarding selection of appropriate practitioners.

(8) National Roster—Members Questionnaire; New collection request; Abstract: After being registered as a roster member, individuals will be surveyed once, via questionnaire, to determine their views on a variety of issues. Topics to be investigated include their level of satisfaction with the application process and computer system that provides web access; and their level awareness of the roster and how to best use it for their needs. This voluntary questionnaire contains 20 questions, and most require only a simple fill-in-the blank response. Data and information from this questionnaire will permit U.S. Institute staff to evaluate the performance of the Roster Program, to determine it is meeting its intended outcomes, and if so or not, why. Affected Entities: Entities potentially affected by this action are roster members. Burden Statement: It is estimated that the annual national public burden and associated costs and will be approximately 66.7 hours and $2,400, respectively. These values were calculated assuming that on average: (a) roster members require 20 minutes per questionnaire; (b) there are 200 roster members per year; (c) respondents are surveyed only once. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $36 hr.

(9) National Roster—Members Follow-up Questionnaire; New collection request; Abstract: After being registered as a roster member for a period of time, individuals will be again surveyed, once, via questionnaire, to determine their views on a variety of issues. Topics to be investigated are similar to those in questionnaire (8), described above, and include their level of satisfaction with their roster membership, the computer system that provides web access; and the degree to which roster membership has been beneficial to them. This voluntary questionnaire contains 20 questions, and most require only a simple fill-in-the blank response. Data and information from this questionnaire will permit U.S. Institute staff to evaluate the performance of its Roster Program, to determine if it is meeting its intended outcomes, and if not, why. Affected Entities: Entities potentially affected by this action are roster members. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 76.7 hours and $2,760, respectively. These values were calculated assuming that on average: (a) roster members require 20 minutes per questionnaire; (b) there are 230 roster members per year; (c) respondents are surveyed only once. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $36 hr.

(10) National Roster—Users Questionnaire (Upon Registering); New collection request; *Abstract:* Users who are seeking to identify appropriate neutrals for a specific case via electronic access to the roster must first register on line with the Roster Manager to gain access to the roster website. After gaining access, users will be surveyed once prior to logging off from their first use of the website to gain information concerning the functioning and utility of the website. Should major revisions occur in the website design, these users will again be surveyed, once, following their next use of the roster website. This voluntary questionnaire contains seven questions, most requiring only a simple fill-in-the blank response. Information from this questionnaire will permit U.S. Institute staff to evaluate the performance of the Roster website and whether it is meeting the intended outcomes, and if so or not, why. *Affected Entities:* Entities potentially affected by this action are individuals who have register to use the roster website. *Burden Statement:* It is estimated that the annual national public burden and associated costs and will be approximately 5 hours and $135, respectively. These values were calculated assuming that on average: (a) users require 15 minutes to complete the questionnaire; (b) there are 20 new users per year; and (c) respondents are surveyed only once. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents,

and (b) respondents' time is valued at $27 hr.

(11) National Roster-Questionnaire for Users After Each Roster Search; New collection request; Abstract: Users who search the roster will be surveyed once for each new roster search. This voluntary questionnaire contains 23 questions, most requiring no more than a simple fill-in-the blank response. Information from this questionnaire will permit U.S. Institute staff to evaluate how well the Roster is performing in meeting the needs of those searching the roster, and if so or not, why. Affected Entities: Entities potentially affected by this action are individuals who use the roster to search for names of neutrals. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 10 hours and $270, respectively. These values were calculated assuming that on average: (a) roster searchers require 10 minutes to complete the questionnaire; (b) there are 60 roster searches per year; and (c) respondents are surveyed only once. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $27 hr.

(12) National Roster—Questionnaire for Users Requesting A Referral; New collection request; Abstract: Users who request assistance for their roster search directly from the Roster Manager, or other U.S. Institute staff, will be surveyed once for each new assisted roster search. This voluntary questionnaire contains 18 questions, most requiring only a simple fill-in-the blank response. Information from this questionnaire will permit U.S. Institute staff to evaluate how well the combination of the roster and support from Institute personnel performed in meeting the needs of those requesting assistance, and if or if not fully, then why. Affected Entities: Entities potentially affected by this action are individuals who request assistance in using the roster to search for names of neutral candidates. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 10 hours and $360, respectively. These values were calculated assuming that on average: (a) users who have requested assistance will require 10 minutes to complete the questionnaire; (b) there are 60 assisted roster searches each year; and (c) respondents are surveyed only once for each referral. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $36 hr.

Environmental Conflict Resolution Training Courses and Workshops

Education and training sessions are conducted by the U.S. Institute and its contractors for a variety of audiences to both increase the appropriate use of ECR and to improve the ability of those participating in ECR processes to effectively negotiate on their own behalf and collaborate on the best possible agreement. The subject of training sessions varies widely, depending on the participants and their specific training needs. The specific objectives of the training must be articulated at the outset and professional training instructors are expected to design and/or deliver appropriate training to meet those objectives and the expectations of the participants.

Participants in training sessions will be asked to complete three questionnaires, one each before the course is presented, again at the conclusion of the training, and finally at some future date. Likewise, instructors will be asked to complete two questionnaires, one each before the course begins, and at the conclusion of the course.

(13) Training—Participants Questionnaire, prior to start; New collection request; Abstract: Training participants will be asked to complete a questionnaire before the course begins. Participation is voluntary and the questionnaire contains 18 questions, most requiring only a simple fill-in-the blank response. Data and information from this questionnaire will establish a baseline for measuring changes in an individual's level of skill and knowledge as a function of participation in the training sessions. Affected Entities: Entities potentially affected by this action are individuals who participate in training sessions sponsored by the U.S. Institute. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 500 hours and $13,500, respectively. These values were calculated assuming that on average: (a) training participants require 10 minutes to complete the questionnaire; and (b) there are 3,000 training participants each year. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $27 hr.

(14) Training—Participants Questionnaire, at the conclusion: New collection request; Abstract: Training participants will be asked to complete a questionnaire at the end of the course. Participation is voluntary and the survey instrument contains nine questions, about half requiring descriptive answers. Data and information from this questionnaire will be compared with the baseline established with the pre-training questionnaire. Results will be used to determine the effectiveness of the training in improving each participant's level of skill and knowledge, and to aid in determining what, if any, factors favorably or adversely affected the participant's learning. Affected Entities: Entities potentially affected by this action are individuals who participate in training sessions sponsored by the U.S. Institute. Burden Statement: It is estimated that the annual national public burden and associated costs and will be approximately 500 hours and $13,500, respectively. These values were calculated assuming that on average: (a) training participants require 10 minutes to complete this questionnaire; and (b) there are 3,000 training participants each year. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $27 hr.

(15) Training—Participants Questionnaire, Follow-Up; New collection request; Abstract: Six months (or an appropriate interval to be determined) after the training session, each participant will be asked to complete a final questionnaire. Participation is voluntary and the survey instrument contains nine questions, about half requiring descriptive answers. Data and information from this questionnaire will be used to determine the longevity and practical usefulness of any improvements in skills and knowledge that participants gained from the original training sessions. The questionnaire also contains some questions designed to identify if and why longer-term training results may not be expected. Affected Entities: Entities potentially affected by this action are individuals who participate in training sessions sponsored by the U.S. Institute. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 500 hours and $13,000, respectively. These values were calculated assuming that on average: (a) training participants require 10 minutes to complete this questionnaire; and (b) there are 3,000 training participants each year. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $27 hr.

(16) Training—Instructor Questionnaire, prior to start; New

collection request; Abstract: Instructors will be asked to complete a questionnaire before the course begins. In most cases, it will be specified in the instructor's contract that they complete the questionnaire. This survey instrument contains six questions, most requiring only a simple fill-in-the blank response. Data and information from this questionnaire will establish a baseline of the instructor's expectations and intentions to be used in measuring changes at the end of the course. Affected Entities: Entities potentially affected by this action are instructors who lead training sessions sponsored by the U.S. Institute. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 33.3 hours and $1,200, respectively. These values were calculated assuming that on average: (a) instructors require 10 minutes to complete the questionnaire; and (b) each year there are 200 instructors who work on training sessions sponsored by the U.S. Institute. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $36 hr.

(17) Training—Instructor Questionnaire, at the conclusion; New collection request; Abstract: When the course concludes, instructors will be asked to complete a questionnaire. In most cases, it will be specified in their contract that they complete this questionnaire. The survey instrument contains five questions, most requiring only a simple fill-in-the blank response. Data and information from this questionnaire will help establish a contextual baseline for evaluating survey data from the training participants. As well, this instrument is also intended to generate useful feedback on ways to improve the U.S. Institute's training projects. Affected Entities: Entities potentially affected by this action are instructors who lead training sessions sponsored by the U.S. Institute. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 33.3 hours and $1,200, respectively. These values were calculated assuming that on average: (a) instructors require 10 minutes to complete the questionnaire; and (b) each year there are 200 instructors who work on training sessions sponsored by the U.S. Institute. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents, and (b) respondents' time is valued at $36 hr.

Meeting Facilitation

U.S. Institute staff and contractors facilitate and provide leadership for many public meetings, ranging from small group meetings to large public convenings of several hundred attendees. In order to maximize the probability that such meeting objectives will be accomplished, the meeting participants must both understand the objectives for the meeting, and perceive that the meeting was managed in a fair and efficient manner. This requires that the right facilitator run the meeting, and the right people attend the meeting.

(18) Meeting Facilitation—Meeting Attendees Questionnaire, at the conclusion of the process; New collection request; Abstract: Attendees at public meetings run by U.S. Institute staff or contractors will be asked to complete a voluntary questionnaire at the conclusion of the meeting. The questionnaire used in this case contains nine questions, two-thirds requiring only a simple fill-in-the blank response. Information from this questionnaire will help evaluate the effectiveness of individual facilitators and particular meeting process designs. Affected Entities: Entities potentially affected by this action are individuals who participate in these public meetings. Burden Statement: It is estimated that the annual national public burden and associated costs will be approximately 833.3 hours and $22,500, respectively. These values were calculated assuming that on average: (a) meeting attendees require 10 minutes to complete the questionnaire; (b) the U.S. Institute conducts 100 public meetings each year; and (c) 50 people attend the average meeting. Cost burden estimates assume: (a) there are no capital or start-up costs for respondents; and (b) respondents' time is valued at $27 hr.

Dated: December 18, 2001.

Christopher L. Helms,

Executive Director, Morris K. Udall Foundation.

[FR Doc. 01–31587 Filed 12–21–01; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL SCIENCE FOUNDATION

DOE/NSF Nuclear Science Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: DOE/NSF Nuclear Science Advisory Committee (1176).

Date and Time: Monday, Jan. 14, 2002 8 a.m.–6 p.m.; Tuesday, Jan. 15, 2002; 8 a.m.–6 p.m.

Place: Rm 585–II 4201 Wilson Blvd., Arlington, VA 22230.

Contact Person: Dr. Bradley D. Keister, Program Director for Nuclear Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 292–7380.

Purpose of Meeting: To provide advice and recommendations concerning the scientific programs of the NSF and DOE in the area of basic nuclear physics research.

Dated: December 19, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–31640 Filed 12–21–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

(Note: The publication date for this notice will change from every other Wednesday to every other Tuesday, effective January 8, 2002. The notice will contain the same information and will continue to be published biweekly.)

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 3, 2001 through December 14, 2001. The last biweekly notice was published on December 12, 2001 (66 FR 64284).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve 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 amendment 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. The basis for this proposed determination for each amendment request is shown below.

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 before action is taken. 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 6D22, 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, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 25, 2002, 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 NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, http://www.nrc.gov/NRC/ADAMS/index.html. 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 a 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 a 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: Rulemaking and Adjudications Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, 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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of 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 amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document room (PDR) Reference staff at 1–800–397–4209, 304–415–4737 or by email to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: April 17, 2001.

Description of amendment request: The proposed amendment would make editorial and administrative corrections to Technical Specifications (TS) Section 3.3, "Instrumentation", and eliminate minor discrepancies between TS Section 3.3 and other plant licensing basis documents.

Basis for proposed no significant hazards consideration determination: 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:

Does the Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

The proposed changes involve correction of editorial or administrative errors made during the conversion of the Clinton Power Station (CPS) Technical Specifications (TS) to the improved TS (ITS). These proposed changes are based upon current design and licensing basis requirements. The proposed changes involve correction or reformatting of the TS and do not involve any physical changes to plant systems, including those that mitigate the consequences of accidents or the manner in which these plant systems are operated. As such, these changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Does the Change Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

The proposed changes involve correcting errors or reformatting existing TS requirements that do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. These changes are consistent with the assumptions in the safety analyses and licensing basis. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the Change Involve a Significant Reduction in a Margin of Safety?

The proposed changes involve correcting editorial or administrative errors introduced during the conversion of the CPS TS to the ITS. The change to the Allowable Value for the Control Room Ventilation System air intake radiation monitors setpoint in TS Table 3.3.7.1–1 is consistent with the supporting analyses for the trip setpoint value that was previously contained in the TS. The changes involve reformatting or correction of errors, and therefore will not reduce any margin of safety because there is no effect on any safety analysis assumptions. These proposed changes maintain requirements within the safety analyses and licensing basis. Therefore, these changes do not involve a significant reduction in a margin of safety.

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.

Attorney for licensee: Robert Helfrich, Mid-West Regional Operating Group, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Anthony J. Mendiola.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: May 21, 2001.

Description of amendment request: The proposed amendment would revise the actions required if the refueling equipment interlocks become inoperable. The proposed changes are consistent with the changes submitted to the Nuclear Regulatory Commission by the Technical Specifications Task Force, Issue number 225, Revision 1.

Basis for proposed no significant hazards consideration determination: 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:

Does the Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

The proposed addition of alternate actions in the event that the refueling equipment interlocks are determined to be in operable ensures that the safety function provided by the interlocks are enforced. This is accomplished through manually inserting a rod block to prevent the inadvertent withdrawal of a control rod when fuel is being moved over the core region.

The refueling equipment interlocks are credited in the Control Rod Removal Error During Refueling—Fuel Insertion with Control Rod Withdrawn as described in Updated Safety Analysis (USAR Section 15.4.1.1.2.2). The manual insertion of a control rod withdrawal block provides equivalent protection for the conditional rod block provided by the refueling equipment interlocks.

The proposed change to the surveillance frequency does not change the means in which the refueling equipment operates. A review of surveillance history was performed for the past two refueling outages. In the last seven performances of the refueling equipment interlocks operability test, the interlocks have operated successfully with no corrective maintenance or corrective action necessary. Therefore, since the proposed changes do not result in any physical changes to the facility, or involve any modifications to plant systems or design parameters or conditions that contribute to the initiation of any accidents previously evaluated, the proposed changes do not increase the probability of any accident previously evaluated.

Since the proposed changes maintain the same level of protection provided by the refueling equipment interlocks, the conclusion of the accident scenario remain valid. The probability of a criticality event during refueling remains such that no radioactive material would be released. Therefore, the proposed changes do not increase the consequences of an accident previously evaluated.

In summary, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the Change Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

The proposed changes do not involve a change to the plant design or operation. Inserting a manual rod block is not considered an abnormal operation. The change to the SR [surveillance requirement] frequency does not increase the probability of a malfunction of the refueling equipment interlocks, since the interlocks are considered reliable and their function can be verified with each fuel move. As a result, the proposed changes do not affect any of the parameters or conditions that could contribute to the initiation of any accidents. No new accident modes or equipment failure modes are created by these changes.

Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the Change Involve a Significant Reduction in a Margin of Safety?

The major challenge to the margin of safety would be a criticality event that would cause a potential failure of the fuel cladding. The proposed addition of alternative actions in the event that the refueling equipment interlocks are determined to be inoperable ensure that equivalent protection is in place during fuel loading movements. Given this equivalent protection, a criticality event is not credible. In addition, the increase in the SR frequency for performing the channel functional test of the refueling equipment interlocks does not impact the ability of the interlocks to perform their function, thereby maintaining the refueling interlocks function.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

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.

Attorney for licensee: Robert Helfrich, Mid-West Regional Operating Group, Exelon Generation Company; LLC, 4300 Windfield Road, Warrenville, IL 60555.

NRC Section Chief: Anthony J. Mendiola.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 7, 2001.

Description of amendment request: The proposed amendments would allow implementation of 10 CFR Part 50, Appendix J, Option B, which governs performance-based containment leakage testing requirements, for Type B and C testing. In addition, the licensee also proposes to (a) modify Technical Specification (TS) 3.6.3 to delete the requirement for conducting soap bubble tests of welded penetrations during Type A tests which are not individually Type B or Type C testable, and (b) to modify TS 3.6.3 to delete a separate requirement for leak testing containment purge lower and upper compartment and instrument room valves with resilient seals. These valves will be covered by the overall Containment Leakage Rate Testing Program. Associated changes to the Bases are also proposed.

Basis for proposed no significant hazards consideration determination: 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:

The following discussion is a summary of the evaluation of the changes contained in this proposed amendment against the 10 CFR 50.92(c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendment 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.

First Standard

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. Implementation of these changes will provide continued assurance that specified parameters associated with containment integrity will remain within acceptance limits as delineated in 10 CFR 50, Appendix J, Option B. The changes are consistent with current safety analyses. Although some of the proposed changes represent minor relaxation to existing TS requirements, they are consistent with the requirements specified by Option B of 10 CFR 50, Appendix J. The systems affecting containment integrity related to this proposed amendment request are not assumed in any safety analyses to initiate any accident sequence. Therefore, the probability of any accident previously evaluated is not increased by this proposed amendment. The proposed changes maintain an equivalent level of reliability and availability for all affected systems. In addition, maintaining leakage within analyzed limits assumed in accident analyses does not adversely affect either onsite or offsite dose consequences. Therefore, the proposed amendment does not increase the consequences of any accident previously evaluated.

Second Standard

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. No changes are being proposed which will introduce any physical changes to the existing plant design. The proposed changes are consistent with the current safety analyses. Some of the changes may involve revision in the testing of components; however, these are in accordance with the McGuire's current safety analyses and provide for appropriate testing or surveillance that is consistent with 10 CFR 50, Appendix J, Option B. The proposed changes will not introduce new failure mechanisms beyond those already considered in the current safety analyses. No new modes of operation are introduced by the proposed changes. The proposed changes maintain, at minimum, the present level of operability of any system that affects containment integrity.

Third Standard

The proposed amendment will not involve a significant reduction in a margin of safety. The provisions specified in Option B of 10 CFR 50, Appendix J allow changes to Type B and Type C test intervals based upon the performance of past leak rate tests. 10 CFR 50, Appendix J, Option B allows longer intervals between leakage tests based on performance trends, but does not relax the leakage acceptance criteria. Changing test intervals from those currently provided in the TS to those provided in 10 CFR 50, Appendix J, Option B does not increase any risks above and beyond those that the NRC has deemed acceptable for the performance based option. In addition, there are risk reduction benefits associated with reduction in component cycling, stress, and wear associated with increased test intervals. The proposed changes provide continued assurance of leakage integrity of containment without adversely affecting the public health and safety and will not significantly reduce existing safety margins. Similar proposed changes have been previously reviewed and approved by the NRC, and they are applicable to McGuire.

Based upon the preceding discussion, Duke Energy has concluded that the proposed amendment 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.

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Section Chief: Richard J. Laufer, Acting.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: November 15, 2001.

Description of amendment request: Entergy Operations, Inc. is proposing that the Grand Gulf Nuclear Station (GGNS) Operating License be amended to revise the GGNS Technical Specification Surveillance Requirements (SRs) pertaining to testing of the standby emergency diesel generators (DGs) to allow DG testing during reactor operation. The proposed change would remove the restriction associated with these SRs that prohibits conducting the required testing of the DGs during reactor operating Modes 1, 2, or 3.

Basis for proposed no significant hazards consideration determination:

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 change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The DGs and their associated emergency loads are accident mitigating features, not accident initiating equipment. Therefore, there will be no impact on any accident probabilities by the approval of the requested amendment.

The design of plant equipment is not being modified by these proposed changes. As such, the ability of the DGs to respond to a design basis accident will not be adversely impacted by these proposed changes. The capability of the DGs to supply power in a timely manner will not be compromised by permitting performance of DG testing during periods of power operation. Additionally, limiting testing to only one DG at a time ensures that design basis requirements for backup power is met, should a fault occur on the tested DG. Therefore, there would be no significant impact on any accident consequences.

Based on the above, the proposed change to permit certain DG surveillance tests to be performed during plant operation will have no effect on accident probabilities or consequences.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident causal mechanisms would be created as a result of NRC [Nuclear Regulatory Commission] approval of this amendment request since no changes are being made to the plant that would introduce any new accident causal mechanisms. Equipment will be operated in the same configuration with the exception of the plant mode in which the testing is conducted. This amendment request does not impact any plant systems that are accident initiators; neither does it adversely impact any accident mitigating systems.

Based on the above, implementation of the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in the margin of safety.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes to the testing requirements for the plant DGs do not affect the operability requirements for the DGs, as verification of such operability will continue to be performed as required (except during different allowed Modes).

Continued verification of operability supports the capability of the DGs to perform their required function of providing emergency power to plant equipment that supports or constitutes the fission product barriers. Consequently, the performance of these fission product barriers will not be impacted by implementation of this proposed amendment.

In addition, the proposed changes involve no changes to setpoints or limits established or assumed by the accident analysis. On this and the above basis, no safety margins will be impacted. Therefore, implementation of the proposed changes would not involve a significant reduction in a margin of safety.

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.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of amendment request: October 29, 2001.

Description of amendment request: The proposed amendments would revise technical specification (TS) 3.9.3, "Refueling Operations—Decay Time," by reducing the amount of time that the reactor must be subcritical before the licensee is allowed to move irradiated fuel assemblies in the reactor pressure vessel from 150 hours to 100 hours. The amendment also makes various editorial, format and administrative changes.

Basis for proposed no significant hazards consideration determination: 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. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change does not alter the manner in which fuel assemblies are handled or core alterations are performed. The proposed change does not alter the manner in which heavy loads are controlled at BVPS. The proposed change does not result in changes being made to structures, systems, or components (SSCs), or to event initiators or precursors. Also, the proposed change does not impact the design of plant systems such that previously analyzed SSCs would now be more likely to fail. The initiating conditions and assumptions for accidents described in the Updated Final Safety Analysis Report (UFSAR) remain as previously analyzed. Thus, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed revision of the decay time from 150 hours to 100 hours is consistent with the assumptions used in the NRC approved fuel handling accident (FHA) analyses for Beaver Valley Power Station (BVPS) Unit Nos. 1 and 2. The BVPS radiological analyses demonstrates that should a FHA occur within the containment or the fuel building that involves irradiated fuel with at least 100 hours of decay, the projected offsite doses for this event will be well within the applicable regulatory limits.

Limiting Condition for Operation (LCO) 3.9.3, "Refueling Operations—Decay Time," will continue to ensure that irradiated fuel is not moved in the reactor pressure vessel until at least 100 hours after shutdown which is consistent with the FHA radiological analysis. This LCO will continue to ensure that key assumptions used in the radiological safety analysis are met. The previously analyzed SSCs are unaffected by the proposed change and continue to provide assurance that they are capable of performing their intended design function in mitigating the effects of design basis accidents (DBAs). As such, the consequences of accidents previously evaluated in the UFSAR will not be increased and no additional radiological source terms are generated. Therefore, there will be no reduction in the capability of those SSCs in limiting the radiological consequences of previously evaluated accidents and reasonable assurance that there is no undue risk to the health and safety of the public will continue to be provided. Thus, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

The proposed administrative, editorial, and format changes do not affect the probability or consequences of any accident.

Therefore, the proposed amendment does not significantly increase the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment does not affect a previously evaluated accident; e.g., FHA. The proposed amendment takes credit for the normal decay of irradiated fuel and the existing radiological analyses for FHAs.

The proposed change does not involve physical changes to analyzed SSCs or changes to the modes of plant operation defined in the technical specification. The proposed change does not involve the addition or modification of plant equipment (no new or different type of equipment will be installed) nor does it alter the design or operation of any plant systems. No new accident scenarios, accident or transient initiators or precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change.

The proposed change does not cause the malfunction of safety-related equipment assumed to be operable in accident analyses. No new or different mode of failure has been created and no new or different equipment performance requirements are imposed for

accident mitigation. As such, the proposed change has no effect on previously evaluated accidents.

The proposed administrative, editorial, and format changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

No. The proposed revision of the decay time from 150 hours to 100 hours is consistent with the assumptions used in the NRC approved FHA accident analyses for BVPS Unit Nos. 1 and 2 and thus does not involve a significant reduction in a margin of safety.

The proposed amendment does not alter the manner in which fuel assemblies are handled or core alterations are performed. The proposed amendment does not alter the manner in which heavy loads are controlled at BVPS.

The proposed changes to the TS requirements will continue to ensure that the necessary plant equipment is operable in the plant conditions where these systems are required to operate to mitigate a DBA. The proposed administrative, editorial, and format changes do not affect plant safety.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

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.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: L. Raghavan, Acting.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of amendment request: October 31, 2001.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) by relocating the pressure temperature Limit Curves and Low Temperature Overpressure Protection (LTOP) and by creating a Pressure-Temperature Limits Report in accordance with Generic Letter 96–03 (GL–96–03), "Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits."

Basis for proposed no significant hazards consideration determination: 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. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes are a relocation of the Reactor Coolant System (RCS) pressure/temperature (P/T) limits, overpressure protection system (OPPS) setpoint, and the enable temperature from the Technical Specifications to the proposed Pressure and Temperature Limits Report (PTLR). The PTLR is created in accordance with the guidance provided by Generic Letter (GL) 96–03 and is consistent with the content of NUREG–1431. The RCS P/T limits, OPPS setpoint, and enable temperature will continue to meet the requirements of 10 CFR 50, Appendix G, and will be generated in accordance with the NRC approved methodology described in WCAP–14040–NP–A, Rev. 2 with the exceptions noted in Technical Specification Section 6.9.6.

Since the proposed changes are administrative in nature and do not involve any change to any values being relocated, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. As stated above, the proposed changes to relocate the RCS P/T limits, OPPS setpoint, and the enable temperature from the Technical Specifications to the PTLR are administrative changes. 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.

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. Does the change involve a significant reduction in a margin of safety?

No. The margin of safety is not affected by the creation of the proposed PTLR. Operation of the plant in accordance with the limits specified in the PTLR will continue to meet the requirements of 10 CFR 50, Appendix G, with the identified exceptions, and will assure that a margin of safety is not significantly decreased as the result of the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

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.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Lakshminaras Raghavan (Acting).

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station (DBNPS), Unit 1, Ottawa County, Ohio

Date of amendment request: October 9, 2001.

Description of amendment request: The proposed amendment changes affected Technical Specifications (TS) 3/4.3.2.2, "Instrumentation—Steam and Feedwater Rupture Control System Instrumentation," including Table 3.3–11, "Steam and Feedwater Rupture Control System Instrumentation," Table 3.3–12, "Steam and Feedwater Rupture Control System Instrumentation Trip Setpoints," and Table 4.3–11 "Steam and Feedwater Rupture Control System Instrumentation Surveillance Requirements." Related administrative changes are proposed to TS 3/4.3.2.3, "Instrumentation—Anticipatory Reactor Trip System Instrumentation," Table 3.3–17, "Anticipatory Reactor Trip System Instrumentation," and TS 3/4.3.3.1, "Instrumentation—Monitoring Instrumentation—Radiation Monitoring Instrumentation," Table 3.3–6, "Radiation Monitoring Instrumentation." Related changes to associated TS Bases 3/4.3.1 and 3/4.3.2, "Reactor Protection System and Safety System Instrumentation," are also proposed.

The main purpose for this license amendment request is to decrease the channel functional test frequency from monthly to quarterly for the Steam and Feedwater Rupture Control System (SFRCS) Instrumentation Channels.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below. These changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the proposed changes do not change any accident initiator, initiating condition, or assumption.

The proposed changes would revise Technical Specification (TS) Table 3.3–11, "Steam and Feedwater Rupture Control System Instrumentation," and Table 4.3–11 "Steam and Feedwater Rupture Control System Instrumentation Surveillance Requirements," to identify the Steam and Feedwater Rupture Control System (SFRCS) output logic as a separate Functional Unit. In addition, the proposed changes would revise TS Table 3.3–12, "Steam and Feedwater

Rupture Control System Instrumentation Trip Setpoints," to remove the "Trip Setpoint" values and also modify the "Allowable Values" entry for Functional Unit 3, "Steam Generator Feedwater Differential Pressure—High," consistent with updated calculations and current setpoint methodology, and revise the applicability of TS Allowable Values for other SFRCS Functional Units in this table. The proposed changes would also revise TS Table 4.3–11 to change the Channel Functional Test surveillance requirements for the SFRCS instrument channels from monthly to quarterly, consistent with current methodology. The proposed changes would also make related administrative changes to TS Limiting Condition for Operation (LCO) 3.3.2.2, TS Table 3.3–17, "Anticipatory Reactor Trip System Instrumentation," TS Table 3.3–6, "Radiation Monitoring Instrumentation," and the associated TS Bases.

These proposed changes do not involve a significant change to plant design or operation.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not invalidate assumptions used in evaluating the radiological consequences of an accident, do not alter the source term or containment isolation, and do not provide a new radiation release path or alter radiological consequences.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not introduce a new or different accident initiator or introduce a new or different equipment failure mode or mechanism.

3. Not involve a significant reduction in a margin of safety as defined in the basis for any Technical Specification. The SFRCS instrumentation setpoint analyses will continue to adequately preserve the margin of safety. In addition, there are no new or significant changes to the initial conditions contributing to accident severity or consequences. Therefore, there are no significant reductions in a margin of safety.

Conclusion:

On the basis of the above, the Davis-Besse Nuclear Power Station has determined that the License Amendment Request does not involve a significant hazards consideration. As this License Amendment Request concerns a proposed change to the Technical Specifications that must be reviewed by the Nuclear Regulatory Commission, this License Amendment Request does not constitute an unreviewed safety question.

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.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station (DBNPS), Unit 1, Ottawa County, Ohio

Date of amendment request: October 12, 2001.

Description of amendment request: The proposed amendment would change the Operating License (OL) paragraph 2.C(1), Maximum Power Level; OL paragraph 2.C(3)(d), Additional Conditions; Technical Specification (TS) 1.3, Definitions—Rated Thermal Power; TS 2.1.1, Safety Limits—Reactor Core, and associated Bases; TS 2.2.1, Limiting Safety System Settings—Reactor Protection System Setpoints, and associated Bases; TS 3/4.1.1.3, Reactivity Control Systems—Moderator Temperature Coefficient; TS 3/4.2.5, Power Distribution Limits—DNB Parameters; TS 3/4.4.9.1, Reactor Coolant System—Pressure/Temperature Limits, and associated Bases; and TS 6.9.1.7, Core Operating Limits Report. The purpose of this license amendment application would make the necessary revisions to the Davis-Besse Nuclear Power Station (DBNPS) TS to reflect an increase in the authorized rated thermal power from 2772 MWt to 2817 MWt (approximately 1.63 percent), based on the use of Caldon Inc. Leading Edge Flow Meter (LEFM) CheckPlus™ System instrumentation to improve the accuracy of the feedwater mass flow input to the plant power calorimetric measurement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1a. Not involve a significant increase in the probability of an accident previously evaluated based on the comprehensive analytical efforts that were performed to demonstrate the acceptability of the proposed power uprate changes. The proposed changes include: revision of the maximum power level limit stated in Operating License (OL) paragraph 2.C(1) and Technical Specification (TS) Section 1.3, increasing the allowable power level from 2772 MWt to 2817 MWt; revision of the reactor core safety limits specified in TS Section 2.1.1; revision of the Reactor Protection System (RPS) high flux and Reactor Coolant System (RCS) pressure-temperature setpoints provided in TS Section 2.2.1; revision of the RCS pressure-temperature limits in TS Section 3/4.4.9.1, and a related change to OL paragraph 2.C(3)(d); and revision of administrative controls associated with the Core Operating Limits Report, as described in TS Section 6.9.1.7. In addition, related changes to the TS Bases associated with these TS Sections are proposed. An evaluation has been performed that identified the systems and components that could be affected by these proposed changes. The evaluation determined that these systems and components will function as designed and that performance requirements remain acceptable.

The primary loop components (reactor vessel, reactor internals, control rod drive mechanisms (CRDMs), loop piping and supports, reactor coolant pumps, steam generators and pressurizer) will continue to comply with their applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a structural failure of these components leading to an accident.

The Leak-Before-Break analysis conclusions remain valid and the breaks previously exempted from structural consideration remain unchanged.

All of the Nuclear Steam Supply System (NSSS) systems will continue to perform their intended design functions during normal and accident conditions. The pressurizer spray flow remains above its design value. Thus, the control system design analyses, which credit the flow, do not require any modification. The components continue to comply with applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a structural failure of these components.

All of the NSSS/Balance of Plant (BOP) interface systems will continue to perform their intended design functions. The main steam safety valves will provide adequate relief capacity to maintain the main steam system within design limits.

The current loss of coolant accident (LOCA) hydraulic forcing functions remain bounding.

The reduction in power measurement uncertainty through the use of the Caldon Leading Edge Flow Meter (LEFM) CheckPlus™ system, allows for certain safety analyses to continue to be used, without modification, at the 2827 MWt power level (102% of 2772 MWt). Other safety analyses performed at a nominal power level of 2772 MWt have been either re-performed or re-evaluated at the 2817 MWt power level, and continue to meet their applicable acceptance criteria. Some existing safety analyses had been previously performed at a power level greater than 2827 MWt, and thus continue to bound the 2817 MWt power level.

The proposed changes to the RCS pressure-temperature limit curves impose a conservative projection of the increase in neutron fluence associated with the power uprate. This projection will ensure that the requirements of 10 CFR 50 Appendix G, "Fracture Toughness Requirements," will continue to be met following the proposed power uprate. The design basis events that were protected against by these limits have not changed, therefore, the probability of an accident previously evaluated is not increased.

In addition to the changes related to the proposed power uprate, unrelated changes are proposed to revise the moderator temperature coefficient requirements listed

in TS Section 3.1.1.3, and to revise requirements relating to the Departure from Nucleate Boiling (DNB) parameters listed in TS Section 3.2.5. These proposed changes are conservative changes and clarifications that do not involve any physical change to systems or components, nor do they alter the typical manner in which the systems or components are operated. Therefore, these changes will not result in a significant increase in the probability of an accident.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed power uprate changes do not alter any assumptions previously made in the radiological consequence evaluations, nor affect mitigation of the radiological consequences of an accident previously evaluated.

The accident radiation dose evaluation was performed at 2827 MWt and is bounding when operating at the proposed 2817 MWt using the LEFM CheckPlus™ flow instrumentation.

The proposed changes unrelated to the power uprate also do not alter any assumption previously made in the radiological consequence evaluations, nor do they affect mitigation of the radiological consequences of an accident previously evaluated. Therefore, these changes will not involve a significant increase in the consequences of an accident previously evaluated.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident scenarios, failure mechanisms or single failures are introduced as a result of the proposed power uprate changes as well as the proposed changes unrelated to the power uprate. All systems, structures, and components previously required for the mitigation of an event remain capable of fulfilling their intended design function. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety-related system.

3. Not involve a significant reduction in a margin of safety because extensive analyses of the primary fission product barriers, conducted in support of the proposed power uprate, have concluded that all relevant design criteria remain satisfied, both from the standpoint of the integrity of at the primary fission product barrier and from the standpoint of compliance with the regulatory acceptance criteria. As appropriate, all evaluations have been performed using methods that have either been reviewed and approved by the Nuclear Regulatory Commission (NRC) or that are in compliance with applicable regulatory review guidance and standards. The proposed changes unrelated to the power uprate do not involve a significant reduction in a margin of safety because they do not involve the potential for a significant increase in a failure rate of any system or component, and existing system and component redundancy is not affected. Also, these changes do not involve any new or significant changes to the initial conditions contributing to accident severity or consequences.

Conclusion:

On the basis of the above, the Davis-Besse Nuclear Power Station has determined that the License Amendment Request 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.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: November 26, 2001.

Description of amendment request: The licensee proposed to amend the Technical Specifications (TSs) to delete Section 3/4.2.6, "Inservice Inspection and Testing," and its associated bases, revise Section 4.2.7, "Reactor Coolant System Isolation Valves," and its associated bases, create a new Section 6.17, "Inservice Testing Program," and delete several reporting requirements in Section 6.9.3, "Special Reports." These changes will improve the TSs, making it consistent with current NRC guidance and the improved Standard Technical Specifications for General Electric (GE) Boiling Water Reactor (BWR)/4 and BWR/6 plants (NUREG–1433 and NUREG–1434, respectively). Most of these changes would also render the TSs to be similar to the Nine Mile Point Nuclear Station, Unit No. 2 TSs, which is based on NUREG–1433 and NUREG–1434.

Basis for proposed no significant hazards consideration determination: 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 operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment deletes duplicative and unnecessary inservice inspection (ISI) and inservice testing (IST) requirements from the Technical Specifications; clarifies remaining IST requirements; revises a requirement to perform quarterly testing of the reactor coolant isolation valves to conform to the periodic testing requirements of the ASME [American Society of Mechanical Engineers] Boiler and Pressure Vessel Code (ASME Code); and deletes unnecessary reporting requirements relating to routine ISI, primary containment leakage testing, and secondary containment leakage testing. These changes do not reduce the plant's existing ISI/IST commitments based on 10CFR50.55a, Section XI of the ASME Code, and Generic Letter 88–01. These changes also do not involve hardware changes, changes in plant setpoints, or changes in plant safety parameters.

Based on the above, the operation of Nine Mile Point Unit 1 (NMP1) in accordance with the proposed amendment, will not involve a significant increase in the probability or the consequences of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any physical modifications to the plant nor alter equipment configuration, setpoints, or safety parameters. The ISI/IST related changes are consistent with current NRC guidance and industry standards and will continue to ensure acceptable equipment operability and availability.

Based on the above, the operation of NMP1 in accordance with the proposed amendment cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed changes do not affect any of the plant's fission product barriers or safety/operational limits. The ISI/IST related changes will continue to ensure acceptable equipment operability and availability.

Based on the above, the operation of NMP1 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

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 requested amendment involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: L. Raghavan, Acting.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of amendment request: November 20, 2001.

Description of amendment request: The licensee proposed to amend the Technical Specifications (TSs) regarding the safety limit minimum critical power

ratio (SLMCPR) to reflect the results of cycle-specific calculations performed for the next fuel cycle (i.e., Cycle 9), using NRC-approved methodology for determining SLMCPR values. The proposed amendment would also editorially revise references to topical reports which document the approved methodology.

Basis for proposed no significant hazards consideration determination: 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 operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the revised Safety Limit Minimum Critical Power Ratio (SLMCPR) values for Nine Mile Point Unit 2 (NMP2) Cycle 9 for incorporation into the Technical Specifications (TS) and their use to determine cycle-specific thermal limits has been performed using the NRC-approved methods and procedures in [Topical Report] NEDE–24011–P–A, "General Electric Standard Application for Reactor Fuel" (GESTAR II). The analysis methodology incorporates cycle-specific parameters and reduced power distribution uncertainties in the determination of the SLMCPR values. These calculations do not change the method of operating the plant and have no effect on the probability of an accident initiating event or transient.

The basis of the Minimum Critical Power Ratio Safety Limit is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLMCPR values preserve the existing margin to transition boiling and the probability of luel damage is not increased. The deletion of listed documents that are already incorporated by reference into GESTAR II is administrative only. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The new SLMCPR values for the NMP2 Cycle 9 core reload have been calculated in accordance with the methods and procedures described in GESTAR II. These methods have been reviewed and approved by the NRC. The deletion of listed documents that are already incorporated by reference into GESTAR II is administrative only. The changes do not involve any new method for operating the facility and do not involve any facility modifications. No new initiating events or transients result from these changes. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS bases will remain the same. The new, cycle-specific SLMCPR values are calculated using NRC-approved methods and procedures that are in accordance with the current fuel design and licensing criteria. The SLMCPR values remain high enough to ensure that greater than 99.9% of all fuel rods in the core are expected to avoid transition boiling if the limits are not violated, thereby preserving the fuel cladding integrity. The deletion of listed documents that are already incorporated by reference into GESTAR II is administrative only. Therefore, the proposed TS changes do not involve a significant reduction in [a] margin of safety.

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 requested amendment involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: L. Raghavan, Acting.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: November 19, 2001.

Description of amendment request: A change is proposed to Technical Specification (TS) 3.0.3 to allow a longer period of time to perform a missed surveillance. The time is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to the specification: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the ***Federal Register*** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated November 7, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely

outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: William D. Reckley, Acting.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: February 2, 2001, supplemented August 31, 2001.

Description of amendment request: The proposed amendments would revise the technical specifications (TSs) to clarify the plant conditions under which various specifications are applicable. The licensee stated in its amendment request that a literal reading of the current technical specifications wording may result in situations where a routine plant shutdown would seem to be prohibited by TSs and, thereby, require entry into TS 3.0.C. This amendment request also makes several administrative changes to the TSs, including revising references to the Chief Nuclear Corporate Officer, capitalizing defined terms, and updating references to previously relocated TS paragraphs and correcting the List of Figures. The licensee's supplement to the amendment request, dated August 31, 2001, proposed a correction of a typographical error in TS Table 3.5–2B, Action 33.

Basis for proposed no significant hazards consideration determination: 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. Does operation of the facility with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes are administrative in nature and clarify existing specifications without reducing or altering the requirements imposed by existing specifications. The proposed changes do not significantly affect any system that is a contributor to initiating events for previously evaluated accidents. Neither do the changes significantly affect any system that is used to mitigate any previously evaluated accidents. Therefore, the proposed changes do not involve any significant increase in the probability or consequence of an accident previously evaluated.

2. Does operation of the facility with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes are administrative in nature and clarify existing specifications without reducing or altering the requirements imposed by existing specifications. The proposed changes do not alter the design, function, or operation of any plant component and do not install any new or different equipment, therefore a possibility of a new or different kind of accident from those previously analyzed has not be[en] created.

3. Does operation of the facility with the proposed amendment involve a significant reduction in a margin of safety?

The proposed changes are administrative in nature and clarify existing specifications without reducing or altering the requirements imposed by existing specifications. Thus, the proposed change[s] do not involve a significant reduction in the margin of safety associated with the safety limits inherent in either the principle barriers to a radiation release (fuel cladding, RCS [reactor coolant system] boundary, and reactor containment), or the maintenance of critical safety functions (subcriticality, core cooling, ultimate heat sink, RCS inventory, RCS boundary integrity, and containment integrity).

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 requests involve no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Acting Section Chief: William D. Reckley, Acting.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: November 21, 2001.

Description of amendment request: The proposed amendment will revise Technical Specifications 2.15(5) and 2.15(6) to identify: (1) all indication and control functions required for the alternate (remote) shutdown panels, (2) panel locations of the functions, and (3) the number of operable channels required.

Basis for proposed no significant hazards consideration determination: 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 change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specifications Sections 2.15(5) and 2.15(6) identify functions, instruments, and controls along with their location and the number of required channels. New Technical Specifications Section 2.15(5) addresses the regulatory requirements for equipment required for Alternative and Dedicated Shutdown Capability per 10 CFR part 50, Appendix R. It will ensure that proper Limiting Conditions for Operation are entered for equipment or functional inoperability. There are no physical alterations being made to the Alternate Shutdown Panels and the Auxiliary Feedwater Panel or related systems. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not result in any physical alterations to the Alternate Shutdown Panels or the Auxiliary Feedwater Panel, or any plant configuration, systems, equipment, or operational characteristics. There will be no changes in operating modes, or safety limits, or instrument limits. With the proposed changes in place, Technical Specifications retain requirements for the Alternate Shutdown Panels and the Auxiliary Feedwater Panel. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes clarify the regulatory requirements for the Alternative and Dedicated Shutdown Capability as defined by 10 CFR Part 50, Appendix R. The proposed changes will not alter any physical

or operational characteristics of the Alternate Shutdown Panels and the Auxiliary Feedwater Panel and their associated systems and equipment. Therefore, the proposed changes do not involve a reduction in a margin of safety.

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.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: November 21, 2001.

Description of amendment request: The proposed amendment will add three topical report references to Technical Specification 5.9.5, "Core Operating Limit Reports."

Basis for proposed no significant hazards consideration determination: 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 change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment incorporates three additional Framatome ANP topical reports for conducting core reload analyses. Since the intent of the amendment request is to add references to NRC-approved reload analysis methods, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new or different modes of operation are proposed as a result of these changes. The proposed revision does not change any equipment required to mitigate the consequences of an accident. The proposed addition of NRC-approved topical reports to the Technical Specification does not modify the manner in which the topical reports may be implemented. The plant will continue to operate within the limits specified by the Core Operating Limits Report and corrective actions will be taken in accordance with the Technical Specifications should these limits be exceeded. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

As required by Technical Specification 5.9.5, the analytical methods used to determine the core operating limits shall be those previously reviewed and approved by the NRC. The proposed change incorporates methodologies applicable for use with fuel supplied by Framatome ANP that have been approved by the NRC as documented by Safety Evaluation Reports (References 10.1, 10.2, and 10.3 [of the November 21, 2001, amendment request]). Because Technical Specification 5.9.5 also requires that the core operating limits shall be determined and requires that all applicable limits of the safety analysis are met, the proposed change does not involve a significant reduction in a margin of safety.

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.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of amendment request: December 28, 2000, as supplemented by letters dated March 29 and October 31, 2001.

Description of amendment request: The proposed amendment would convert the Humboldt Bay Power Plant Unit 3 Current Technical Specifications to a set of Permanently Defueled Technical Specifications with a more standardized format and content based on a revision to 10 CFR 50.36 (Technical Specifications) and technical specifications approved for other permanently shutdown nuclear power plants (Millstone Unit 1 and Trojan Nuclear Plant).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analyses of the issue of no significant hazards consideration, which are presented below.

The conversion of the Humboldt Bay Power Plant (HBPP) Current Technical Specifications (CTS) to Permanently Defueled Technical Specifications (PDTS) involves the following four types of dispositions:

A Administrative reformatting and rewording

D Item deleted from the Technical Specifications (TS)

LG Relocating items from CTS to the Defueled Safety Analysis Report (DSAR), PDTS, or other Licensee-Controlled Document

N Addition of new requirements of new sections to the PDTS

Administrative Reformatting and Rewording

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves reformatting and editorially rewording of the CTS. As such, this change is administrative in nature and does not impact initiators of analyzed events or assumed mitigation of accidents or transient events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will not impose any different operational requirements and any administrative additions are non-operational in nature and have not been identified and justified. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. This change is administrative in nature. As such, no question of safety is involved.

Items Deleted from the Technical Specifications that are Duplicative in Nature to Other Regulatory Requirements

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves deleting information from the CTS. The information being deleted is still required to be performed and is being performed by the licensee because the information is contained in regulatory requirements contained in the Code of Federal Regulations. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will not impose any different operational requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because it has no impact on

any safety analysis assumptions. This change is administrative in nature. The requirements being deleted from the CTS are still required to be met and are being met by the licensee because these requirements exist in the Code of Federal Regulations. As such, no question of safety is involved.

Items Deleted from the Technical Specifications That Have No Application in the Proposed HBPP PDTS

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves deleting information from the CTS. The deletion process involves no technical changes to the CTS. As such, this change is administrative in nature and does not impact initiators of analyzed events or assumed mitigation of accidents or transient events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will not impose any different operational requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. This change is administrative in nature. As such, no question of safety is involved.

Relocating Information from CTS to the DSAR, PDTS Bases or Other Licensee-Controlled Documents

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relocates requirements and descriptive information from the CTS to the PDTS Bases, DSAR, or other licensee-controlled documents. The PDTS Bases, DSAR, or other licensee-controlled documents containing the relocated requirements and information will be maintained using provisions of 10 CFR 50.59 or other appropriate regulatory controls. Since any future changes to the PDTS Bases, DSAR, or other licensee-controlled documents will be evaluated per the requirements of 10 CFR 50.59 or other appropriate regulatory controls, proper controls are in place to adequately limit the probability or consequences of an accident previously evaluated. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will not impose any different requirements and adequate control of the information will be maintained. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. In addition, the requirements and information to be relocated from the CTS to the PDTS Bases, DSAR, or other licensee-controlled documents are not being revised; they are being relocated verbatim. Since any future changes to these requirements in the PDTS Bases, DSAR, or other licensee-controlled documents will be evaluated per the requirements of 10 CFR 50.59 or other appropriate regulatory controls, proper controls are in place to maintain an appropriate margin of safety. Therefore this change does not involve a significant reduction in a margin of safety.

Addition of New Requirements or New Sections to the PDTS

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves the addition of requirements or sections to the proposed PDTS. Each addition either provides equivalent or potentially more restrictive controls than previously provided. The additional requirements or controls do not impact initiators of analyzed events or assumed mitigation of accidents or transient events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will not impose any different operational requirements and any addition is non-operational in nature and has been identified and justified. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. This change provides the equivalent or more restrictive requirements on the surveillance and control of TS parameters. As such, no question of safety is involved.

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.

Attorney for licensee: Christopher J. Warner, Esquire, Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 22, 2001.

Description of amendment request: Approve reactor core power uprate, and revise the Technical Specifications to reflect the power uprate.

Basis for proposed no significant hazards consideration determination: 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:

STPNOC [South Texas Project Nuclear Operating Company] has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, "Issuance of amendment," as discussed below.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The comprehensive analytical efforts performed to support the proposed uprate conditions include a review and evaluation of all components and systems (including interface systems and control systems) that could be affected by this change. The revised power uprate value was input to applicable safety analyses. The proposed change is not an initiator of any design-basis accident. All of the Nuclear Steam Supply System or Balance of Plant interface systems will continue to perform their intended design functions and meet all performance requirements. The primary loop components (reactor vessel, reactor internals, control rod drive mechanisms, loop piping and supports, reactor coolant pump, steam generator, and pressurizer) continue to comply with their applicable structural limits and will continue to perform their intended design functions. Therefore, there is no increase in the probability of a structural failure of these components.

The auxiliary systems and components continue to comply with applicable structural limits and will continue to perform their intended design functions. Therefore, there is no increase in the probability of a structural failure of these components. The steam generator safety valves will provide adequate relief capacity to maintain the steam generators within design limits. The steam dump system will still relieve 40

percent of the maximum full-load steam flow.

Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The applicable analyses have been evaluated with respect to the increase in core power associated with this change. All applicable radiological acceptance criteria continue to be met. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change neither causes the initiation of any accident nor creates any new limiting single failures. All of the affected systems and components continue to perform their intended design functions. The proposed change has no adverse effects on any safety-related system or component and does not challenge the performance or integrity of any safety-related system.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The WRB–2M DNB methodology is used to demonstrate that core thermal-hydraulic limits are maintained without any significant reduction in margin of safety for the uprated power level of 3853 MWt (1.4-percent uprate) assuming core designs composed of Robust Fuel Assemblies. The WRB–1 DNB correlation demonstrates that there is no significant reduction in the margin of safety for core designs composed of standard or Vantage 5 Hybrid (V5H) fuel types. Extensive analyses of the primary fission product barriers have concluded that all relevant design criteria remain satisfied, both from the standpoint of the integrity of the primary fission product barrier and from the standpoint of compliance with the regulatory acceptance criteria. As appropriate, all evaluations have been performed using methods that either have been reviewed and approved by the Nuclear Regulatory Commission or are in compliance with all applicable regulatory review guidance and standards.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, STPNOC concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: October 23, 2001.

Brief description of amendments: The proposed amendment would revise Technical Specification (TS) 5.5.9, "Steam Generator Tube Surveillance Program," to permit tube sleeving repair techniques, developed by Westinghouse Electric Company (Westinghouse) and referred to as "Westinghouse Leak Tight Sleeves."

Basis for proposed no significant hazards consideration determination: 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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Westinghouse Leak Tight Sleeves are designed using the applicable American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code and, therefore, meet the design objectives of the original steam generator tubing. The applicable design criteria for the sleeves conforms to the stress limits and margins of safety of Section III of the ASME code. Mechanical testing has shown that the structural strength of repair sleeves under normal, upset, and faulted conditions provides margin to the acceptance limits. These acceptance limits bound the most limiting (three times normal operating pressure differential) burst margin recommended by Draft Regulatory Guide 1.121. Burst testing of sleeved tubes has demonstrated that no unacceptable levels of primary-to-secondary leakage are expected during any plant condition.

Evaluation of the repaired steam generator tubes indicates no detrimental effects on the sleeve or sleeve-tube assembly from reactor coolant system flow, primary or secondary coolant chemistries, thermal conditions or transients, or pressure conditions as may be experienced at CPSES [Comanche Peak Steam Electric Station]. Corrosion testing of sleeve-tube assemblies indicates no evidence of sleeve or tube corrosion considered detrimental under anticipated service conditions.

The installation of the proposed sleeves is controlled via the sleeving vendor's proprietary processes and equipment. The Westinghouse process has been in use since 1984 and has been implemented more than 24 times for the installation of over 4,200 sleeves. The CPSES steam generator design was reviewed and found to be compatible with the installation processes and equipment.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant or the manner in which it is operated. The consequences of a hypothetical failure of the sleeved tube is bounded by the current steam generator tube rupture (SGTR) analysis described in the CPSES FSAR [Final Safety Analysis Report]. Due to the slight reduction in diameter caused by the sleeve wall thickness, primary coolant release rates would be slightly less than assumed for the steam generator tube rupture analysis, depending on the break location, and therefore, would result in lower total primary fluid mass release to the secondary system. A main steam line break or feed line break will not cause a SGTR since the sleeves are analyzed for a maximum accident differential pressure greater than that predicted in the CPSES safety analysis. The proposed reduction of the steam generator primary to secondary operational leakage limit provides added assurance that leaking flaws will not propagate to burst prior to commencement of plant shutdown.

In conclusion, based on the discussion above, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The Westinghouse Leak Tight Sleeves are designed using the applicable ASME Code as guidance; therefore, they meet the objectives of the original steam generator tubing. As a result, the functions of the steam generators will not be significantly affected by the installation of the proposed sleeves. The proposed repair sleeves do not interact with any other plant systems. Any accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing tube rupture accident analysis. The continued integrity of the installed sleeve is periodically verified by the Technical Specification requirements.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant or the manner in which it is operated. As discussed above, the reduced primary to secondary leakage limit is considered a conservative change in the plant limiting conditions for operation. Therefore, TXU Electric concludes that this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The repair of degraded steam generator tubes with Westinghouse Leak Tight Sleeves restores the structural integrity of the degraded tube under normal operating and postulated accident conditions. The design safety factors utilized for the repair sleeves are consistent with the safety factors in the ASME Code used in the original steam generator design. The portions of the installed sleeve assembly that represents the reactor coolant pressure boundary can be monitored for the initiation and progression of sleeve/tube wall degradation. Use of the

previously identified design criteria and design verification testing assures that the margin of safety is not significantly different from the original steam generator tubes. The proposed sleeve inspection requirements are more stringent than existing requirements for inspection of the steam generator tubes, and the reduction in the operational limit for primary to secondary leakage through the steam generator tubes is more conservative than current requirements. Therefore, TXU Electric concludes that the proposed change does not involve a significant reduction in a margin of safety.

EPRI [Electric Power Research Institute] qualified eddy current techniques will be used for the detection of tube degradation in 3/4 inch welded sleeved tubes. Alternate inspection techniques, may be used as they become available, as long as it can be demonstrated that the technique used provides the same degree or greater degree of inspection rigor.

The effect of sleeving on the design transients and accident analyses were reviewed and found to remain valid up to the level of steam generator tube plugging consistent with the minimum reactor flow rate as specified in Technical Specification 3.4.1. Continued compliance with the RCS [Reactor Coolant System] flow limits of Technical Specification 3.4.1 is assured through precision flow measurements.

Because all relevant safety analyses were reviewed and found to remain valid, and because the appropriate design margins are maintained through compliance with the relevant ASME Code requirements, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

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.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: November 20, 2001.

Description of amendment request: The proposed amendment would: (1) Move Table 4.7.2, "Primary Containment Isolation Valves" and references to the Table from the Vermont Yankee Nuclear Power Station (VY) Technical Specifications (TSs) to the Technical Requirements Manual; (2) change Surveillance Requirement 4.7.B.1.b to reflect that the Standby Gas Treatment system (SBGT) duct heater needs to meet relative humidity design basis; (3) add section 3.7.E, "Reactor Building Automatic Ventilation System Isolation Valves," to the Table of Contents; (4) remove wording in 3.5.A.4.a and b referencing a one-time 30-day Limiting Condition for Operation; and (5) make administrative changes to Sections 5.3 and 6.4.

Basis for proposed no significant hazards consideration determination: 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 operation of the Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes consist of removal of the primary containment isolation valve component list from the VY TS, revision of the SBGT inlet heater surveillance minimum power rating and other administrative changes. The probability of occurrence of a previously evaluated accident is not increased because neither containment isolation nor the SBGT heater are accident initiators, and the proposed changes do not impact any accident initiating conditions. The consequences of an accident previously evaluated are not increased because the proposed changes do not impact the ability of containment to restrict, or SBGT to filter, the release of any fission product radioactivity to the environment. The proposed changes to remove the primary containment isolation valve component list from TS, relocate the information to a licensee controlled document, and to change the SBGT inlet heater power input surveillance requirement, will have no significant impact on any safety related structures, systems or components. The TS requirements for the primary containment isolation valves and SBGT operability and surveillance will not be changed. Additionally, the administrative changes do not affect any system operation or function.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any physical alteration of plant equipment and do not change the method by which any safety-related system performs its function. No new or different types of equipment will be installed. The proposed changes do not create any new accident initiators or involve an activity that could be an initiator of an accident of a different type.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed administrative changes, the removal of the primary containment isolation valve component list from TS and the change to the SBGT inlet heater power input surveillance requirement, do not alter the TS requirements for containment integrity, containment isolation, SBGT operability, or adversely affect their capability. The changes will not alter the basic operation of process variables, systems, or components as described in the safety analysis. No new equipment is introduced.

The proposed changes do no impact design margins of the primary containment isolation system, SBGT or any other system to perform their safety functions. The essential safety functions of providing primary containment integrity and providing filtration of airborne radioactive releases, are maintained. There is no physical or operational change being made which would alter the sequence of events, plant response, or margins in existing safety analyses. The proposed changes result in no impact on analyzed accident event precursors or effects.

These proposed changes do not alter the physical design of the plant. There is no change in methods of operation. The proposed changes do not alter the means by which primary containment isolation capability is maintained and SBGT is operated.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

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.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: May 30, 2001, as supplemented on November 6, 2001.

Brief description of amendment: Connecticut Yankee Atomic Power Company (the licensee) requested changes to the Technical Specifications (TSs) for the Haddam Neck Plant. The changes to Sections 5 and 6 of the TSs correct terminology, clarify the specifications for consistency with established programs and Standard TSs, and reflect current plant conditions. The changes also reflect the licensee's current organization titles. For information only, the licensee also included proposed changes to the TS Bases for spent fuel pool water level and cooling. The NRC staff did not review the proposed changes to the TS Bases.

Date of issuance: December 4, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 196.

Facility Operating License No. DPR–61: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44164).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 2001.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut Inc., et al., Docket Nos. 50–336 and 50–423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut Date of application for amendment: August 9, 2001

Brief Description of amendment: The amendments modify the Millstone Nuclear Power Station, Unit Nos. 2 and 3 Technical Specifications to clarify the licensed operator qualification standards.

Date of issuance: December 5, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 258 and 199.

Facility Operating License Nos. NPD–69 and NPF–49: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 17, 2001 (66 FR 52798).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 5, 2001.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: April 23, 2001.

Brief description of amendment: The amendment approves a change to Technical Specification (TS) 3.8.1.1, "Electrical Power System—A.C. Sources." The change removes Surveillance Requirement 4.8.1.1.2.c.1 regarding Emergency Diesel Generator inspection at least once per 18 months during shutdown condition.

Date of issuance: December 7, 2001.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 259.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 12, 2001 (66 FR 31705).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 2001.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina Date of application for amendments: June 13, 2000, as supplemented August 30 and September 10, 2001.

Brief description of amendments: The amendments revised the Facility Operating License of each unit to (1) delete license conditions that have been fulfilled; and (2) make other corrections and editorial changes.

Date of issuance: December 5, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 200 and 181.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Facility Operating License.

Date of initial notice in ***Federal Register:*** November 1, 2000 (65 FR 65341).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 5, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: June 15, 2001.

Brief description of amendments: Eliminate the Technical Specifications (TS) requirement that the Automatic Depressurization System (ADS) designated Safety/Relief Valves (S/RVs) open during the manual actuation of the ADS and rewords the Surveillance Requirement (SR) 3.5.1.8 frequency to require the testing of all required ADS manual actuation solenoids during the performance of SR 3.5.1.8 in place of testing on a staggered basis.

Date of issuance: December 13, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 151 and 137.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 8, 2001 (66 FR 41618).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 13, 2001.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of application for amendments: August 13, 2001.

Brief description of amendments: These amendments delete Technical Specifications (TS) Section 6.8.4, which required a Post-Accident monitoring program, for Beaver Valley Power Station, Unit Nos. 1 and 2, and thereby eliminate the requirements to have and maintain the post-accident sampling system (PASS) for those units.

Date of Issuance: December 6, 2001.

Effective date: Upon issuance and shall be implemented within 180 days.

Amendment Nos.: 245, 123.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 19, 2001 (66 FR 48286).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 6, 2001.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: May 17, 2001, as supplemented by letter dated September 5, 2001.

Brief description of amendments: The amendments revised Technical Specification (TS) 3/4.9.3, "Decay Time," to allow the start of core offload at 100 hours after reactor subcriticality between September 15 and June 15, when the lake temperature is assumed to be not higher than 77.8°F, and 148 hours after reactor subcriticality between June 16 and September 14, when the lake temperature is assumed to be not higher than 85°F. TS 3/4.9.3 currently prohibits fuel movement in the reactor pressure vessel until the reactor has been subcritical for at least 168 hours. The 168-hour decay time was placed in the CNP TS with Amendment Nos. 169 and 152 to DPR–58 and DPR–74, respectively, on January 14, 1993.

Date of issuance: November 30, 2001.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 260 and 243.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44174)

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original ***Federal Register*** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 30, 2001.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: August 30, 2001, as supplemented October 10 and November 16, 2001.

Brief description of amendment: The amendment revises the Technical Specification safety limit minimum critical power ratio for two recirculation pump operation for Cycle 21.

Date of issuance: December 6, 2001.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 125.

Facility Operating License No. DPR–22: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 3, 2001 (66 FR 50470)

The October 10 and November 16, 2001, supplements provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 2001.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: February 7, 2001, as supplemented by letters dated October 17 and November 2, 2001.

Brief description of amendment: The requested changes replaced the current accident source term used in the design basis radiological analyses for control room habitability with an alternative source term (AST) pursuant to 10 CFR 50.67, "Accident Source Term." OPPD requested a full implementation of the AST. Changes were also made to the Ft. Calhoun Technical Specifications to make them consistent with the revised associated accident analysis.

Date of issuance: December 5, 2001.

Effective date: December 5, 2001, to be implemented within 60 days from the date of issuance.

Amendment No.: 201.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 2, 2001 (66 FR 22031).

The October 17 and November 2, 2001, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 2001.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: May 3, 2001.

Brief Description of amendments: The amendments relocate cycle-specific

reactor coolant system parameter limits from the Technical Specifications (TS) and associated Bases, to the Core Operating Limits Report. The amendments also, add a reference to the Refueling Boron Concentration to TS 5.6.5 to correct an omission.

Date of issuance: December 4, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 151 and 143.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55024).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 2001.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: February 12, 2001.

Brief description of amendments: The amendments consist of deleting Surveillance Requirement 4.4.6.2.2.e of South Texas Project Technical Specifications Section 3/4.4.6.2.

Date of issuance: December 11, 2001.

Effective date: As of the date of issuance, and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—134; Unit 2—123.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 12, 2001 (66 FR 31715).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 11, 2001.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: December 14, 2000.

Brief description of amendment: These amendments revise Technical Specifications Sections 4.7.7.1.d.1 and 4.7.7.2.a. These changes increase the specified minimum number of compressed bottles of air from 84 to 102, and revise the differential pressure limit across the Control Room Emergency Ventilation System HEPA Filter, demister filter, and charcoal adsorber.

Date of issuance: December 12, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 228 and 209.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 24, 2001 (66 FR 7687).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 12, 2001.

No significant hazards consideration comments received: No.

(Note: The publication date for this notice will change from every other Wednesday to every other Tuesday, effective January 8, 2002. The notice will contain the same information and will continue to be published biweekly.

Dated at Rockville, Maryland, this 17th day of December, 2001.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–31473 Filed 12–21–01; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care Treatment Furnished by the United States; Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by section 2(a) of Public Law 87–693 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget by Executive Order No. 11541 of July 1, 1970 (35 FR 10737), the two sets of rates outlined below are hereby established. These rates are for use in connection with the recovery, from tortiously liable third persons, of the cost of hospital and medical care and treatment furnished by the United States (Part 43, Chapter I, Title 28, Code of Federal Regulations) through three separate Federal agencies. The rates have been established in accordance with the requirements of OMB Circular A–25, requiring reimbursement of the full cost of all services provided and will remain in effect until further notice. The rates for VA that were published in the **Federal Register** on October 31, 2000 remain in effect until further notice. The rates are as follows:

1. Department of Defense

The Department of Defense (DoD) reimbursement rates for inpatient, outpatient, and other services are provided in accordance with Title 10, United States Code, section 1095. Due to size, the sections containing the Drug Reimbursement Rates (section III.D.) and the rates for Ancillary Services Requested by Outside Providers (section III.E.) are not included in this package. Those rates are available from the TRICARE Management Activity's Uniform Business Office web site: *http://www.tricare.osd.mil/ebc/rm_home/imcp/ubo/ubo_01.htm.* The medical and dental service rates in this package (including the rates for ancillary services and other procedures requested by outside providers) are effective October 1, 2001. Pharmacy rates are updated on an as needed basis.

2. Health and Human Services

The tortiously liable rates for Indian Health Service health facilities are based on Medicare cost reports. The obligations for the Indian Health Service hospitals participating in the cost report project were identified and combined with applicable obligations for area offices costs and headquarters costs. The hospital obligations were summarized for each major cost center providing medical services and distributed between inpatient and outpatient. Total inpatient costs and outpatient costs were then divided by the relevant workload statistic (inpatient day, outpatient visit) to produce the inpatient and outpatient rates. In calculation of the rates, the Department's unfunded retirement liability cost and capital and equipment depreciation costs were incorporated to conform to requirements set forth in OMB Circular A–25.

In addition, the obligations for each cost center include obligations from certain other accounts, such as Medicare and Medicaid collections and the Contract Health fund, that were used to support the inpatient and outpatient workload. Obligations were excluded for certain cost centers that primarily support workloads outside of the directly operated hospitals or clinics (public health nursing, public health nutrition, health education). These obligations are not a part of the traditional cost of hospital operations and do not contribute directly to the inpatient and outpatient visit workload.

Separate rates per inpatient day and outpatient visit were computed for Alaska and the rest of the United States.

This gives proper weight to the higher cost of operating medical facilities in Alaska.

1. Department of Defense

For the Department of Defense, effective October 1, 2001 and thereafter:

Inpatient, Outpatient and Other Rates and Charges

I. Inpatient Rates [1] [2]

Per inpatient day	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
A. Burn Center	$3,550.00	$6,156.00	$6,492.00
B. All Other Inpatient Services (Based on Diagnosis Related Groups (DRG) [3].			

1. Average FY 2002 Direct Care Inpatient Reimbursement Rates

Adjusted standard amount	IMET	Interagency	Other (full/third party)
Large Urban	$3,625.00	$6,170.00	$6,486.00
Other Urban/Rural	3,771.00	6,694.00	7,069.00
Overseas	3,958.00	9,293.00	9,742.00

2. Overview

The inpatient rates are based on the cost per DRG, which is the inpatient full reimbursement rate per hospital discharge weighted to reflect the intensity of the principal diagnosis, secondary diagnoses, procedures, patient age, etc. involved. The average cost per Relative Weighted Product (RWP) for large urban, other urban/rural, and overseas facilities will be published annually as an inpatient adjusted standardized amount (ASA) (see paragraph I.B.1, above). The ASA will be applied to the RWP for each inpatient case, determined from the DRG weights, outlier thresholds, and payment rules published annually for hospital reimbursement rates under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1), including adjustments for length of stay (LOS) outliers. An outlier refers to a patient's LOS, which is either atypically short or long. They are determined by short or long stay outlier thresholds. Inliers, i.e., those patients who fall within the bounds of the outlier thresholds, receive DRG weights that represent their relative resource intensity.

Each Military Treatment Facility (MTF) providing inpatient care has a separate ASA rate. The MTF-specific ASA rate is the published ASA rate adjusted for area wage differences and indirect medical education (IME) for the discharging hospital (see Attachment 1). The MTF-specific ASA rate submitted on the claim is the rate that payers will use for reimbursement purposes. An example of how to apply a specific military treatment facility's ASA rate to a DRG standardized weight to arrive at the costs to be recovered is contained in paragraph I.B.3. below.

3. Example of Adjusted Standardized Amounts for Inpatient Stays

Figure 1 shows examples for a non-teaching hospital (Reynolds Army Community Hospital) in Other Urban/Rural areas.

a. The cost to be recovered is the MTF cost for medical services provided. Billings will be at the third party rate.

b. DRG 020: Nervous System Infection Except Viral Meningitis. The RWP (i.e. the DoD measure of workload credit derived from biometrics dispositions weighted by CHAMPUS DRG weights) for an inlier case is the CHAMPUS weight of 2.0860. (DRG statistics shown are from FY 2000.)

c. The MTF-applied ASA rate is $6,849.00 (Reynolds Army Community Hospital's third party rate as shown in Attachment 1).

d. The MTF cost to be recovered is the RWP factor (2.0860) in subparagraph 3.b., above, multiplied by the amount ($6,849.00) in subparagraph 3.c., above which equals $14,287.00

e. Cost to be recovered is $14,287.00.

FIGURE 1.—THIRD PARTY BILLING EXAMPLES

DRG No.	DRG description	DRG weight	Arithmetic mean LOS	Geometric mean LOS	Short stay threshold	Long stay threshold
020	Nervous System Infection Except Viral Meningitis	2.0860	7.7	5.5	1	29

Hospital	Location	Area wage rate index	IME adjustment	Group ASA	MTF–Applied ASA
Reynolds Army Community Hospital	Other Urban/Rural	.8996	1.0	$7,069.00	$6,849.00

Patient	Length of stay	Days above threshold	Relative weighted product			TPC
			Inlier *	Outlier **	Total	Amount ***
#1	7 days	0	2.0860	000	2.0860	$14,287.00
#2	21 days	0	2.0860	000	2.0860	14,287.00

Patient	Length of stay	Days above threshold	Relative weighted product			TPC
			Inlier *	Outlier **	Total	Amount ***
#3	35 days	6	2.0860	.7510	2.8370	19,431.00

* DRG Weight
** Outlier calculation = 33 percent of per diem weight X number of outlier days. The outlier must meet the criteria determined by the outlier threshold, i.e., the number of days beyond which hospitalization LOS is considered outside the typical range. These are specific for each DRG.
=.33 (DRG Weight/Geometric Mean LOS) × (Patient LOS - Long Stay Threshold)
=.33 (2.0860/5.5) × (35 – 29)
=.33 (.37927) × 6 (take out to five decimal places)
=.12516 X 6 (carry to five decimal places)
=.7510 (carry to four decimal places)
*** MTF-Applied ASA × Total RWP

II. Outpatient Rates

A. *Per Clinic Visit* [1 2]

MEPRS Code [4]	Clinical service	International military education & training (IMET)	Interagency & other federal agency sponsored patients	Other (full/third party)
	1. Medical Care			
BAA	Internal Medicine	$50.00	$199.00	$210.00
BAB	Allergy	61.00	113.00	119.00
BAC	Cardiology	107.00	199.00	209.00
BAE	Diabetic	74.00	137.00	144.00
BAF	Endocrinology (Metabolism)	124.00	231.00	243.00
BAG	Gastroenterology	146.00	272.00	286.00
BAH	Hematology	225.00	419.00	442.00
BAI	Hypertension	198.00	369.00	388.00
BAJ	Nephrology	180.00	334.00	352.00
BAK	Neurology	136.00	254.00	267.00
BAL	Outpatient Nutrition	51.00	95.00	100.00
BAM	Oncology	158.00	294.00	310.00
BAN	Pulmonary Disease	144.00	267.00	281.00
BAO	Rheumatology	116.00	216.00	228.00
BAP	Dermatology	93.00	172.00	182.00
BAQ	Infectious Disease	151.00	282.00	297.00
BAR	Physical Medicine	94.00	175.00	184.00
BAS	Radiation Therapy	142.00	264.00	278.00
BAT	Bone Marrow Transplant	154.00	287.00	302.00
BAU	Genetic	343.00	639.00	673.00
BAV	Hyperbaric	276.00	513.00	540.00
	2. Surgical Care			
BBA	General Surgery	162.00	302.00	318.00
BBB	Cardiovascular and Thoracic Surgery	291.00	541.00	570.00
BBC	Neurosurgery	169.00	314.00	331.00
BBD	Ophthalmology	106.00	198.00	209.00
BBE	Organ Transplant	717.00	1,335.00	1,406.00
BBF	Otolaryngology	117.00	217.00	229.00
BBG	Plastic Surgery	134.00	249.00	262.00
BBH	Proctology	95.00	177.00	186.00
BBI	Urology	131.00	244.00	257.00
BBJ	Pediatric Surgery	72.00	133.00	140.00
BBK	Peripheral Vascular Surgery	83.00	155.00	163.00
BBL	Pain Management	113.00	210.00	222.00
BBM	Vascular and Interventional Radiology	351.00	653.00	688.00
	3. Obstetrical and Gynecological (OB-GYN) Care			
BCA	Family Planning	75.00	139.00	146.00
BCB	Gynecology	98.00	182.00	191.00
BCC	Obstetrics	78.00	145.00	153.00
BCD	Breast Cancer Clinic	147.00	274.00	289.00
	4. Pediatric Care			
BDA	Pediatric	71.00	133.00	140.00
BDB	Adolescent	75.00	139.00	146.00
BDC	Well Baby	49.00	91.00	96.00

MEPRS Code[4]	Clinical service	International military education & training (IMET)	Interagency & other federal agency sponsored patients	Other (full/third party)
	5. Orthopaedic Care			
BEA	Orthopaedic	112.00	208.00	219.00
BEB	Cast	63.00	117.00	123.00
BEC	Hand Surgery	60.00	112.00	118.00
BEE	Orthotic Laboratory	72.00	134.00	141.00
BEF	Podiatry	63.00	117.00	124.00
BEZ	Chiropractic	30.00	56.00	58 00
	6. Psychiatric and/or Mental Health Care			
BFA	Psychiatry	121.00	226.00	238.00
BFB	Psychology	75.00	140.00	148.00
BFC	Child Guidance	71.00	132.00	139.00
BFD	Mental Health	118.00	219.00	231.00
BFE	Social Work	113.00	211.00	222.00
BFF	Substance Abuse	110.00	206.00	216.00
	7. Family Practice/Primary Medical Care			
BGA	Family Practice	84.00	156.00	165.00
BHA	Primary Care	82.00	152.00	160.00
BHB	Medical Examination	82.00	152.00	160.00
BHC	Optometry	57.00	106.00	112.00
BHD	Audiology	48.00	90.00	94.00
BHE	Speech Pathology	91.00	169.00	178.00
BHF	Community Health	67.00	125.00	131.00
BHG	Occupational Health	90.00	167.00	176.00
BHH	TRICARE Outpatient	58.00	108.00	114.00
BHI	Immediate Care	113.00	211.00	222.00
	8. Emergency Medical Care			
BIA	Emergency Medical	142.00	264.00	278.00
	9. Flight Medical Care			
BJA	Flight Medicine	98.00	183.00	192.00
	10. Underseas Medical Care			
BKA	Underseas Medicine	57.00	107.00	113.00
	11. Rehabilitative Services			
BLA	Physical Therapy	43.00	81.00	85.00
BLB	Occupational Therapy	87.00	162.00	70.00

B. *Ambulatory Procedure Visit* (APV)—*Per Visit*[5]

MEPRS Code[4]	Clinical Service	International Military Education & Training (IMET)	Interagency & Other Federal Agency Sponsored Patients	Other (Full/ Third Party)
BB	Surgical Care	1,068.00	1,987.00	2,093.00
BE	Orthopaedic Care	1,315.00	2,448.00	2,577.00
All Other	B clinics other than BB and BE, to include those B clinics where: 1. There is an APU established within DoD guidelines AND 2. There is a rate established for that clinic in section IIA. Some B clinics, such as BF, BI, BJ and BL, perform the type of services where the establishment of an APU would not be within appropriate clinical guidelines.	297.00	553.00	582.00

III. Other Rates and Charges [1 2]

A. Per Each

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
FBI	Immunization	$18.00	$34.00	$36.00
	B. *Family Member Rate* (formerly Military Dependents Rate)	11.90		
	C. *Subsistence Rate.*[15]			
	Standard Rate	8.10		
	Discount Rate	6.75		

D. Reimbursement Rates For Drugs Requested By Outside Providers [6]

E. Ancillary Services Requested by an Outside Provider—Per Procedure [7]

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
DB	Laboratory procedures requested by an outside provider current procedural terminology (CPT) 2001 weight multiplier.	$19.00	$28.00	$29.00
DC, DI	Radiology procedures requested by an outside provider CPT 2001 weight multiplier.	38.00	54.00	57.00

F. Dental Rate—Per Procedure [11]

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	Dental services ADA code weight multiplier	$31.00	$73.00	$77.00

G. Ambulance Rate—Per Hour [12]

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
FEA	Ambulance	$67.00	$124.00	$131.00

H. AirEvac Rate—Per Trip (24 hour period) [13]

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	AirEvac Services—Ambulatory	$257.00	$479.00	$505.00
	AirEvac Services—Litter	751.00	1,397.00	1,471.00

I. Observation Rate—Per hour [14]

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	Observation Services—Hour	$13.00	$24.00	$26.00

IV. Elective Cosmetic Surgery Procedures and Rates

Cosmetic surgery procedure	International classification diseases (ICD–9)	Current procedural terminology (CPT)[8]	FY 2002 charge[9]	Amount of Charge
Mammaplasty—augmentation.	85.50, 85.32, 85.31	19325, 19324, 19318	Inpatient Charge per DRG or APV	([a]) ([b])
Mastopexy	85.60	19316	Inpatient Charge per DRG Or APV or applicable Outpatient Clinic Rate.	([a b c])
Facial Rhytidectomy	86.82, 86.22	15824	Inpatient Charge per DRG or APV	([a b])
Blepharoplasty	08.70, 08.44	15820, 15821, 15822, 15823.	Inpatient Charge per DRG or APV or applicable Outpatient Clinic Rate.	([a b c])
Mentoplasty (Augmentation/Reduction).	76.68, 76.67	21208, 21209	Inpatient Charge per DRG or APV or applicable Outpatient Clinic Rate.	([a b c])
Abdominoplasty	86.83	15831	Inpatient Charge per DRG or APV or applicable Outpatient Clinic Rate.	([a b c])
Lipectomy Suction per region[10].	86.83	15876, 15877, 15878, 15879.	Inpatient Charge per DRG or APV or applicable Outpatient Clinic Rate.	
Rhinoplasty	21.87, 21.86	30400, 30410	Inpatient Charge per DRG Or APV or applicable Outpatient Clinic Rate.	([a b c])
Scar Revisions beyond CHAMPUS.	86.84	1578	Inpatient Charge per DRG or APV or applicable Outpatient Clinic Rate.	([a b c])
Mandibular or Maxillary Repositioning.	76.41	21194	Inpatient Charge per DRG or APV or applicable Outpatient Clinic Rate.	([a b c])
Dermabrasion	86.25	15780	Inpatient Charge per DRG or APV or applicable Outpatient Clinic Rate.	([a b c])
Hair Restoration	86.64	15775	Inpatient Charge per DRG or APV or applicable Outpatient Clinic Rate.	([a b c])
Removing Tattoos	86.25	15780	Inpatient Charge per DRG or APV or applicable Outpatient Clinic Rate.	([a b c])
Chemical peel	86.24	15790	Inpatient charge per DRG or APV or applicable Outpatient clinic rate.	([a b c])
Arm/thigh dermolipectomy.	86.83	15836/15832	Inpatient charge per DRG or APV	([a b])
Refractive surgery			APV or applicable outpatient clinic rate	([b c e])
Radial keratotomy		65771		
Other procedure (if applies to laser or other refractive surgery).		66999		
Otoplasty		69300	APV or applicable outpatient clinic rate	([b c])
Brow lift	86.3	15839	Inpatient charge per DRG or APV or applicable outpatient clinic rate.	([a b c])

Notes on Cosmetic Surgery Charges

[a] Charges for Inpatient surgical care services are based on the cost per DRG. (See notes 8 through 10, below, for further details on reimbursable rates.)

[b] Charges for ambulatory procedure visits (formerly same day surgery) are listed in section II.B. (See notes 8 through 10, below, for further details on reimbursable rates.) The ambulatory procedure visit (APV) rate is used if the elective cosmetic surgery is performed in an ambulatory procedure unit (APU).

[c] Charges for outpatient clinic visits are listed in sections II.A. The outpatient clinic rate is not used for services provided in an APU. The APV rate should be used in these cases.

[d] Charge is solely determined by the location of where the care is provided and is not to be based on any other criteria. An APV rate can only be billed if the location has been established as an APU following all required DoD guidelines and instructions.

[e] Refer to Office of the Assistant Secretary of Defense (Health Affairs) policy on Vision Correction Via Laser Surgery For Non-Active Duty Beneficiaries, April 7, 2000, for further guidance on billing for these services. It can be downloaded from: *http://www.tricare.osd.mil/policy/2000poli.htm.*

Notes on Reimbursable Rates

[1] Percentages can be applied when preparing bills for both inpatient and outpatient services. Pursuant to the provisions of 10 U.S.C. 1095, the inpatient Diagnosis Related Groups and inpatient per diem percentages are 96 percent hospital and 4 percent professional charges. The outpatient per visit percentages are 89 percent outpatient services and 11 percent professional charges.

[2] DoD civilian employees located in overseas areas shall be rendered a bill when services are performed.

[3] The cost per Diagnosis Related Group (DRG) is based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal and secondary diagnoses, surgical procedures, and patient demographics involved. The adjusted standardized amounts (ASA) per Relative Weighted Product (RWP) for use in the direct care system is comparable to procedures used by the Centers for Medicare and Medicaid Services (CMS) and the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). These expenses include all direct care expenses associated with direct patient care. The average cost per RWP for large urban, other urban/rural, and overseas will be published annually as an adjusted standardized amount (ASA) and will include the cost of inpatient professional services. The DRG rates will apply to reimbursement from all sources, not just third party payers.

MTFs without inpatient services, whose providers are performing inpatient care in a civilian facility for a DoD beneficiary, can bill payers the percentage of the charge that represents professional services as provided in [1] above. The ASA rate used in these cases, based on the absence of a ASA rate for the facility, will be based on the average ASA rate for the type of metropolitan statistical area the MTF resides, large urban, other urban/rural, or overseas (see paragraph I.B.1.). The Uniform Business Office must receive documentation of care provided in order to bill.

[4] The Medical Expense and Performance Reporting System (MEPRS) code is a three digit code which defines the summary account and the subaccount within a functional category in the DoD medical system. MEPRS codes are used to ensure that consistent expense and operating performance data is reported in the DoD military medical system. An example of the MEPRS hierarchical arrangement follows:

Outpatient Care (Functional Category), B (MEPRS CODE), Medical Care (Summary Account), BA (MEPRS CODE), Internal Medicine (Subaccount), BAA (MEPRS CODE).

[5] Ambulatory procedure visit is defined in DoD Instruction 6025.8, "Ambulatory Procedure Visit (APV)," dated September 23, 1996, as immediate (day of procedure) pre-procedure and immediate post-procedure care requiring an unusual degree of intensity and provided in an ambulatory procedure unit (APU). An APU is a location or organization within an MTF (or freestanding outpatient clinic) that is specially equipped, staffed, and designated for the purpose of providing the intensive level of care associated with APVs. Care is required in the facility for less than 24 hours. All expenses and workload are assigned to the MTF-established APU associated with the referring clinic. The BB and BE APV rates are to be used only by clinics that are subaccounts under these summary accounts (see [4] for an explanation of MEPRS hierarchical arrangement). The All Other APV rate is to be used only by those clinics that are not a subaccount under BB or BE. In addition, APV rates may only be utilized for clinics where there is a clinic rate established. For example, BLC, Neuromuscular Screening, no longer has an established rate. Therefore, an APU cannot be defined and an APV cannot be billed for this clinic.

[6] Third party payers (such as insurance companies) shall be billed for prescription services when beneficiaries who have medical insurance obtain medications from MTFs that are prescribed by providers external to the MTF (e.g., physicians and dentists). Eligible beneficiaries (family members or retirees with medical insurance) are not liable personally for this cost and shall not be billed by the MTF. Medical Services Account (MSA) patients, who are not beneficiaries as defined in 10 U.S.C. 1074 and 1076, are charged at the "Other" rate if they are seen by an outside provider and only come to the MTF for prescription services. The standard cost of medications ordered by an outside provider includes the DoD-wide average cost of the drug, calculated by lowest cost for the generic drugs with the same dosage and strength. The prescription charge is calculated by multiplying the number of units (e.g., tablets or capsules) by the unit cost and adding $6.00 for the cost of dispensing the prescription. Dispensing costs include overhead, supplies, and labor, etc. to fill the prescription.

The list of drug reimbursement rates is too large to include in this document. Those rates are available from the TRICARE Management Activity's Uniform Business Office web site, *http://www.tricare.osd.mil/ebc/rm_home/imcp/ubo/ubo_01.htm.*

[7] The list of rates for ancillary services requested by outside providers and obtained at a Military Treatment Facility is too large to include in this document. Those rates are available from the TRICARE Management Activity's Uniform Business Office website, http://www.tricare.osd.mil/ebc/rm_home/imcp/ubo/ubo_01.htm.

Charges for ancillary services requested by an outside provider (e.g., physicians and dentists) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for ancillary services when beneficiaries who have medical insurance obtain services from the MTF which are prescribed by providers external to the MTF. Laboratory and Radiology procedure costs are calculated by multiplying the DoD-established weight for the Physicians' Current Procedural Terminology (CPT) 2001 code by either the laboratory or radiology multiplier (section III.E.). Radiology procedures performed by Nuclear Medicine use the same methodology as Radiology for calculating a charge because their workload and expenses are included in the establishment of the Radiology multiplier.

Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. MSA patients, who are not beneficiaries as defined by 10 U.S.C. 1074 and 1076, are charged at the "Other" rate if they are seen by an outside provider and only come to the MTF for ancillary services.

[8] The attending physician is to complete the CPT 2001 code to indicate the appropriate procedure followed during cosmetic surgery. The appropriate rate will be applied depending on the treatment modality of the patient: ambulatory procedure visit, outpatient clinic visit or inpatient surgical care services.

[9] Family members of active duty personnel, retirees and their family members, and survivors shall be charged elective cosmetic surgery rates. Elective cosmetic surgery procedure information is contained in section IV. The patient shall be charged the rate as specified in the FY 2002 reimbursable rates for an episode of care. The charges for elective cosmetic surgery are at the full reimbursement rate (designated as the "Other" rate) for inpatient care services based on the cost per DRG, ambulatory procedure visits as contained in section II.B. or the appropriate outpatient clinic rate in sections II.A. The patient is responsible for the cost of the implant(s) and the prescribed cosmetic surgery rate. (Note: The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration guidelines.)

[10] Each regional lipectomy shall carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

[11] Dental service rates are based on a dental rate multiplied by the DoD established weight for the American Dental Association (ADA) code performed. For example, for ADA code 00270, bite wing single film, the weight is 0.15. The weight of 0.15 is multiplied by the appropriate rate, IMET, IAR, or Full/Third Party rate to obtain the charge. If the Full/Third Party rate is used, then the charge for this ADA code will be $11.55 ($77 × .15 = $11.55).

The list of ADA codes and weights for dental services is too large to include in this document. Those rates are available from the TRICARE Management Activity's Uniform Business Office web site, *http://www.tricare.osd.mil/ebc/rm_home/imcp/ubo/ubo_01.htm.*

[12] Ambulance charges shall be based on hours of service in 15 minute increments. The rates listed in section III.G. are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) that the ambulance is logged out on a patient run. Fractions of an hour shall be rounded to the next 15 minute increment (e.g., 31 minutes shall be charged as 45 minutes).

[13] Air in-flight medical care reimbursement charges are determined by the status of the patient (ambulatory or litter) and are per patient during a 24-hour period. The appropriate charges are billed only by the Air Force Global Patient Movement Requirement Center (GPMRC). These charges are only for the cost of providing medical care. Flight charges are billed by GPMRC separately.

[14] Observation Services are billed at the hourly charge. Begin counting when the patient is placed in the observation bed and round to the nearest hour. For example, if a patient has received 1 hour and 20 minutes of observation, then you bill for 1 hour of service. If the status of a patient changes to inpatient, the charges for observation services are added to the DRG assigned to the case and not separately billed. If a patient is released from observation status and is sent to an APV, the charges for observation services are not billed separately but are added to the APV rate to recover all expenses.

[15] Subsistence is billed under the Medical Services Account (MSA) Program only. The MSA office shall collect subsistence charges from all persons, including inpatients and transient patients not entitled to food service at Government expense. Please refer to DoD 6010.15–M, Military Treatment Facility Uniform Business Office (UBO) Manual, April 1997 and the DoD 7000.14–R, "Department of Defense Financial Management Regulation", Volume 12, Chapter 19 for guidance on the the use of these rates.

ATTACHMENT 1.—FY02 ADJUSTED STANDARDIZED AMOUNTS (ASA) BY MILITARY TREATMENT FACILITY

DMISID	MTF name	Serv	Full cost rate	Interagency rate	IMET rate	TPC rate
0003	Lyster AH—Ft. Rucker	A	$6,703	$6,348	$3,576	$6,703
0005	Bassett ACH—Ft. Wainwright	A	7,241	6,856	3,863	7,241
0006	3rd Med Grp—Elmendorf AFB	F	7,109	6,732	3,793	7,109

ATTACHMENT 1.—FY02 ADJUSTED STANDARDIZED AMOUNTS (ASA) BY MILITARY TREATMENT FACILITY—Continued

DMISID	MTF name	Serv	Full cost rate	Interagency rate	IMET rate	TPC rate
0009	56th Med Grp—Luke AFB	F	6,474	6,159	3,618	6,474
0014	60th Med Grp—Travis AFB	F	9,946	9,419	5,306	9,946
0024	NH Camp Pendleton	N	8,687	8,264	4,855	8,687
0028	NH Lemoore	N	7,034	6,661	3,752	7,034
0029	NH San Diego	N	10,904	10,374	6,094	10,904
0030	NH Twenty Nine Palms	N	6,596	6,274	3,686	6,596
0032	Evans ACH—Ft. Carson	A	6,985	6,615	3,726	6,985
0033	10th Med Grp—USAF Academy	F	7,062	6,687	3,767	7,062
0037	Walter Reed AMC—Washington DC	A	10,384	9,878	5,803	10,384
0038	NH Pensacola	N	8,704	8,242	4,643	8,704
0039	NH Jacksonville	N	8,539	8,123	4,772	8,539
0042	96th Med Grp—Eglin AFB	F	8,747	8,283	4,666	8,747
0045	6th Med Grp—MacDill AFB	F	6,482	6,167	3,623	6,482
0047	Eisenhower AMC—Ft. Gordon	A	8,677	8,217	4,629	8,677
0048	Martin ACH—Ft. Benning	A	8,118	7,688	4,331	8,118
0049	Winn ACH—Ft. Stewart	A	6,989	6,618	3,728	6,989
0052	Tripler AMC—Ft. Shafter	A	10,134	9,597	5,406	10,134
0053	366th Med Grp—Mountain Home AFB	F	7,056	6,682	3,764	7,056
0055	375th Med Grp—Scott AFB	F	8,579	8,161	4,794	8,579
0056	NH Great Lakes	N	6,538	6,220	3,654	6,538
0057	Irwin AH—Ft. Riley	A	6,498	6,154	3,467	6,498
0060	Blanchfield ACH—Ft Campbell	A	6,577	6,228	3,509	6,577
0061	Ireland ACH—Ft. Knox	A	6,467	6,124	3,450	6,467
0064	Bayne-Jones ACH—Ft. Polk	A	6,602	6,252	3,522	6,602
0066	89th Med Grp—Andrews AFB	F	8,807	8,378	4,922	8,807
0067	NNMC Bethesda	N	10,913	10,382	6,099	10,913
0073	81st Med Grp—Keesler AFB	F	10,213	9,671	5,448	10,213
0075	Wood ACH—Ft. Leonard Wood	A	6,572	6,223	3,506	6,572
0078	55th Med Grp—Offutt AFB	F	9,245	8,755	4,932	9,245
0079	99th Med Grp—Nellis AFB	F	6,495	6,179	3,630	6,495
0084	49th Med Grp—Holloman AFB	F	7,068	6,693	3,771	7,068
0086	Keller ACH—West Point	A	7,342	6,953	3,917	7,342
0089	Womack AMC—Ft. Bragg	A	7,586	7,184	4,047	7,586
0091	NH Camp LeJeune	N	6,694	6,339	3,571	6,694
0092	NH Cherry Point	N	6,809	6,448	3,632	6,809
0093	319th Med Grp—Grand Forks AFB	F	6,966	6,597	3,716	6,966
0094	5th Med Grp—Minot AFB	F	6,965	6,595	3,715	6,965
0095	74th Med Grp—Wright-Patterson AFB	F	11,385	10,781	6,073	11,385
0098	Reynolds ACH—Ft. Sill	A	6,849	6,486	3,654	6,849
0100	NH Newport	N	6,486	6,170	3,625	6,486
0101	20th Med Grp—Shaw AFB	F	7,028	6,656	3,749	7,028
0104	NH Beaufort	N	6,940	6,572	3,702	6,940
0105	Moncrief ACH—Ft. Jackson	A	7,011	6,639	3,740	7,011
0106	28th Med Grp—Ellsworth AFB	F	7,049	6,675	3,760	7,049
0108	Wm Beaumont AMC—Ft. Bliss	A	8,575	8,120	4,575	8,575
0109	Brooke AMC—Ft Sam Houston	A	9,404	8,946	5,255	9,404
0110	Darnall AH—Ft. Hood	A	7,904	7,485	4,216	7,904
0112	7th Med Grp— Dyess AFB	F	6,999	6,628	3,734	6,999
0113	82nd Med Grp—Sheppard AFB	F	6,970	6,600	3,718	6,970
0117	59th Med Wing F—Lackland AFB	F	9,977	9,491	5,575	9,977
0120	1st Med Grp—Langley AFB	F	6,421	6,108	3,588	6,421
0121	McDonald ACH—Ft. Eustis	A	6,103	5,806	3,411	6,103
0123	Dewitt AH—Ft. Belvoir	A	8,131	7,735	4,544	8,131
0124	NH Portsmouth	N	8,355	7,949	4,669	8,355
0125	Madigan AMC—Ft. Lewis	A	11,847	11,218	6,320	11,847
0126	NH Bremerton	N	8,400	7,955	4,481	8,400
0127	NH Oak Harbor	N	6,709	6,382	3,749	6,709
0131	Weed ACH—Ft. Irwin	A	7,064	6,689	3,769	7,064
0606	95th CSH—Heidelberg	A	9,742	9,293	3,958	9,742
0607	Landstuhl Rgn MC	A	9,742	9,293	3,958	9,742
0609	67th CSH—Wurzburg	A	9,742	9,293	3,958	9,742
0612	121st Gen Hosp—Seoul	A	9,742	9,293	3,958	9,742
0615	NH Guantanamo Bay	N	9,742	9,293	3,958	9,742
0616	NH Roosevelt Roads	N	9,742	9,293	3,958	9,742
0617	NH Naples	N	9,742	9,293	3,958	9,742
0618	NH Rota	N	9,742	9,293	3,958	9,742
0620	NH Guam	N	9,742	9,293	3,958	9,742
0621	NH Okinawa	N	9,742	9,293	3,958	9,742
0622	NH Yokosuka	N	9,742	9,293	3,958	9,742
0623	NH Keflavik	N	9,742	9,293	3,958	9,742
0624	BH Sigonella	N	9,742	9,293	3,958	9,742

ATTACHMENT 1.—FY02 ADJUSTED STANDARDIZED AMOUNTS (ASA) BY MILITARY TREATMENT FACILITY—Continued

DMISID	MTF name	Serv	Full cost rate	Interagency rate	IMET rate	TPC rate
0633	48th Med Grp—RAF Lakenheath	F	9,742	9,293	3,958	9,742
0635	39th Med Grp—Incirlik AB	F	9,742	9,293	3,958	9,742
0638	51st Med Grp—Osan AB	F	9,742	9,293	3,958	9,742
0639	35th Med Grp—Misawa	F	9,742	9,293	3,958	9,742
0640	374th Med Grp—Yokota AB	F	9,742	9,293	3,958	9,742
0805	52nd Med Grp—Spangdahlem	F	9,742	9,293	3,958	9,742
0808	31st Med Grp—Aviano	F	9,742	9,293	3,958	9,742

2. Department of Health and Human Services

For the Department of Health and Human Services, Indian Health Service, effective October 1, 2001 and thereafter:

Hospital Care Inpatient Day	
General Medical Care.	
Alaska	$2,025
Rest of the United States	1,571
Outpatient Medical Treatment	
Outpatient Visit.	
Alaska	363
Rest of the United States	196

Beginning October 1, 2001, the rates prescribed herein superceded those established by the Director of the Office of Management and Budget October 31, 2000 (FR Doc. 00–27726).

Mitchell Daniels, Jr.,

Director, Office of Management and Budget.

[FR Doc. 01–31663 Filed 12–21–01; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45160; File No. SR–Amex–2001–91]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to the Listing and Trading of Balanced Strategy Notes

December 17, 2001.

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 October 29, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or ("Sec") a proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Amex amended its proposal on November 21, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade Balanced Strategy Notes ("Balanced Strategy Notes" or "Notes"), the return on which is based on the Balanced Strategy Index ("Balanced Strategy Index"). The Balanced Strategy Index is based upon the performance of the Standard & Poor's ("S&P") 500 Total Return Index ("S&P 500 Total Return Index") and the U.S. Domestic Master Index ("U.S. Bond Index"[4] (each, an "Underlying Index," and together, the "Underlying Indexes") pursuant to the methodology set forth below. Initially, the Underlying Indexes will each have a weighting of 50% of the Balanced Strategy Index. The Amex will rebalance the Balanced Strategy Index annually to reset the weighting of the Underlying Indexes to 50% each of the weight of the Balanced Strategy Index.

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 Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III below. The Amex 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

Under Section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[5] The Amex proposes to list for trading under Section 107A of the Company Guide notes based on the Balanced Strategy Index ("Balance Strategy Notes" or "Notes"), as described below. The Balanced Strategy Index will be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240. 19b–4.

[3] See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Yvonne Fraticelli, Special Counsel, Division of Market Regulation ("Division"), Commission, dated November 20, 2001 ("Amendment No. 1"). In Amendment No. 1, the Amex enclosed a draft circular that the Amex will distribute to members. Among other things, the circular described the Balanced Strategy Notes and the suitability requirements applicable to the Balanced Strategy Notes. In addition, the Amex made the following clarifications: (1) with respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Balanced Strategy Notes to determine that such transaction is suitable for the customer, and to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transactions; (2) Merrill Lynch & Co., Inc. has designed the Balanced Strategy Notes for investors who want to participate in the changes in U.S. domestic equity and bond markets and who are willing to forego market interest payments on the Balanced Strategy Notes; (3) the Amex represents that its surveillance procedures are adequate to properly monitor the trading of the Balanced Strategy Notes; and (4) the index divisor referenced in connection with the Standard and Poor's 500 Total Return Index keeps the index comparable over time to its base period (1941–1943) and is the reference point for all maintenance adjustments.

[4] The Amex clarified the definition of the U.S. Bond Index by indicating that it intends to refer to the U.S. Domestic Master Index as the U.S. Bond Index. Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Yvonne Fraticelli, Special Counsel, Division, Commission, on December 7, 2001 ("December 7 Conversation"). As discussed more fully below, the U.S. Bond Index, which is comprised of over 4,000 issues, is an indicator of the performance of the investment grade U.S. domestic bond market.

[5] See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29) ("Hybrid Approval Order").

determined, calculated and maintained solely by the Amex.[6]

Description of the Notes

The Balanced Strategy Notes are senior non-convertible debt securities of Merrill Lynch & Co., Inc ("Merrill Lynch"). Merrill Lynch has designed the Balanced Strategy Notes for investors who want to participate in changes in U.S. domestic equity and bond markets and who are willing to forego market interest payments on the Notes, such as floating interest rates paid on standard senior non-callable debt securities.[7] The Notes will have a term of not less than one, nor more than ten years. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change between the "Starting Index Value" and the "Ending Index Value" (the "Redemption Amount") less an index adjustment factor, as described more fully below. The "Starting Index Value" is the value of the Balanced Strategy Index on the date the issuer prices the Notes for initial sale to the public. The "Ending Index Value" is the value of the Balanced Strategy Index over a period shortly prior to the expiration of the Notes. The Ending Index Value will be used in calculating the amount owners will receive upon maturity. The Notes will not have a minimum principal amount that will be repaid, and, accordingly, payments on the Notes prior to or at maturity may be less than the original issue price of the Notes. During a two-week period in the designated month each year, investors will have the right to require the issues to repurchase the Balanced Strategy Notes at a redemption amount based on the value of the Balanced Strategy Index at such repurchase date. The Balanced Strategy Notes are not callable by the issuer.

The Balanced Strategy Notes are cash-settled in U.S. dollars. The holder of a Note does not have any right to receive any of the securities comprising the Underlying Indexes or any other ownership right or interest in the component securities of the Underlying Indexes.

At the outset, the Underlying Indexes will each approximate 50% of the Starting Index Value. Specifically, both the S&P 500 Total Return Index and the U.S. Bond Index will be assigned a multiplier on the date of issuance so that each Underlying Index represents approximately an equal percentage of the value of the Balanced Strategy Index on the date the Notes are priced for initial sale to the public. The multiplier indicates the percentage of the Underlying Index, given its current value, to be included in the calculation of the Balanced Strategy Index. The Balanced Strategy Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the date the Notes are priced for initial sale to the public. The value of the Balanced Strategy Index at any time will equal the sum of values of each Underlying Index multiplied by their respective multiplier less a pro rata portion of the annual index adjustment factor.[8]

The S&P 500 Total Return Index is a broad-based stock index that provides an indication of the performance of the U.S. equity market. The S&P 500 Total Return Index is a capitalization-weighted index reflecting the total market value, including the reinvestment of dividends, of 500 widely-held component stocks relative to a particular base period. The S&P 500 Total Return Index is computed by dividing the total market value, plus dividends reinvested,[9] of the 500 companies in the S&P 500 Total Return Index by an index divisor.[10] The securities included in the S&P 500 Total Return Index are listed on the Amex or the New York Stock Exchange, Inc. ("NYSE"), or traded through the facilities of the National Association of Securities Dealers, Inc. Automated Quotation ("Nasdaq") System and listed as Nasdaq National Market securities. As of October 22, 2001, the market capitalization of the securities included in the S&P 500 Total Return ranged from a high of $373,58 billion to a low $329.04 million. The average daily trading volume for these same securities for the last six months, as of the same date, ranged from a high of 22 million shares to a low of 1.1 million shares. The Amex and other options exchanges previously have listed options and other securities whose performance has been linked to or based on the S&P 500 Composite Stock Price Index ("S&P 500 Index"),[11] which is identical to the S&P 500 Total Return Index except that the S&P 500 Total Return Index includes dividends paid on the underlying component stocks of the S&P 500 Index.

The Commission previously approved an Amex proposal to list and trade seven bond index-linked term notes under Section 107A of the Company Guide.[12] One of the bond indexes included in the 1999 Order was the U.S. Bond Index. The U.S. Bond Index, established in 1975 and sponsored and calculated by the Merrill Lynch Research Portfolio Strategy Group, is an indicator of the performance of the investment grade U.S. domestic bond market. It is a broad-based index consisting of over 4,000 bonds with a market value of over $5 trillion. For a bond to qualify for inclusion in the U.S. Bond Index, the bond must meet a pre-established and defined list of objective criteria.[13] The bonds included in the U.S. Bond Index also meet or exceed the Exchange's Bond and Debenture Listing Standards set forth in Section 104 of the Company Guide.[14] The U.S. Bond Index

[6] Subject to the criteria in the prospectus supplement of the Notes regarding the construction of the Balanced Strategy Index, the Exchange has sole discretion regarding changes to the Balanced Strategy Index.

[7] *See* Amendment No. 1, *supra* note 3.

[8] At the end of each day, the Balanced Strategy Index will be reduced by a pro rata portion of the annual index adjustment factor, expected to be 1.0% (*i.e.*, 1.0% 365 days = 0.0027% daily). This reduction of the value of the Balanced Strategy Index will reduce the total return to investors upon exchange or maturity. The Amex represents that an explanation of this deduction will be included in any marketing materials, fact sheets, or any other material circulated to investors regarding the trading of this product.

[9] The S&P 500 Total Return Index assumes the reinvestment of dividends on a daily basis. Monthly, quarterly, and annual total return numbers are calculated by daily compounding of reinvested dividends.

[10] The index divisor keeps the S&P 500 Total Return Index comparable over time to its base period (1941–1943) and is the reference point for all maintenance adjustments. *See* Amendment No. 1, *supra* note 3.

[11] *See* Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (File No. SR–CBOE–83–08) (approving the listing and trading of options on the S&P 500 Index); 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (File No. SR–Amex–92–18) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500 Index); No. 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (File No. SR–NYSE–89–05) (approving the listing and trading of Exchange Stock Portfolios based on the value of the S&P 500 Index); and 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (File No. SR–AMEX–90–06) (approving the listing and trading of a unitinvestment trust linked to the S&P 500 Index).

[12] *See* Securities Exchange Act Release No. 41334 (April 27, 1999), 64 FR 23883 (May 4, 1999) (order approving File No. SR–Amex–99–03) ("1999 Order").

[13] Information as to how the U.S. Bond Index is calculated, including the inclusion rules, is published on Bloomberg and the Merrill Lynch public web site. Changes in any rules are generally published approximately 30 days in advance of the change.

[14] The Exchange's Bond and Debenture Listing Standards provide for the listing of individual bond or debenture issuance provided the issue has an aggregate market value or principal amount of at least $5 million and either: The issuer of the debt security has equity securities listed on the Exchange (or on the NYSE); an issuer of equity securities listed on Exchange (or on the NYSE) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; an issuer of equity securities listed on the Exchange (or on the NYSE) has guaranteed the debt security; a nationally recognized statistical rating organization (an "NRSRO") has assigned a current rating to the debt security that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO; or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned: (i) An investment grade rating to an

is rebalanced on the last calendar day of the month. Bonds meeting the U.S. Bond Index's inclusion criteria on the last calendar day of the month are included in the U.S. Bond Index for the following month. Issues that no longer meet the criteria during the course of the month remain in the U.S. Bond Index until the next month-end rebalancing, at which point they are dropped from the U.S. Bond Index. Bonds included in the U.S. Bond Index are held constant throughout the month until the following monthly rebalancing. Bond weightings for the U.S. Bond Index are based on a bond's total outstanding capitalization (sum of the product of total face value currently outstanding multiplied by the price and accrued interest). Returns and weighted average characteristics are published daily.

As of the close of business on each anniversary date (the anniversary of the day the Balanced Strategy Index was initially calculated and set to 100), the Amex will rebalance the Balanced Strategy Index so that each Underlying Index will represent approximately 50% of the value of the Balanced Strategy Index. To effectuate this result, the Amex will determine the multiplier for each Underlying Index and will indicate the percentage allocated to each Underlying Index, given their respective closing values on the anniversary date, so that each Underlying Index represents an equal percentage of the Balanced Strategy Index value at the close of business on an anniversary date. For example, if the Balanced Strategy Index value at the close of business on an anniversary date was 200, then each of the Underlying Indexes would be allocated a portion of the value of the Index equal to 100, and if the closing market price of one Underlying Index on the anniversary date was 160, the applicable share multiplier would be reset to 0.625. Conversely, if the Balanced Strategy Index value was 80, then each of the Underlying Indexes would be allocated the value of the Balanced Strategy Index equal to 40, and if the closing market price of one Underlying Index on the anniversary date was 20, the applicable share multiplier would be reset to 2.

The Exchange will continuously calculate the Balanced Strategy Index and, similar to other stock index values published by the Exchange, the value of the Balanced Strategy Index will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Criteria for Initial and Continued Listing

The Balanced Strategy Notes will conform to the initial listing guidelines under Section 107A of the Company Guide and continued listing guidelines under Sections 1001–1003 of the Company Guide. Specifically, under Section 107A of the Company Guide, the initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer shall have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer that is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, Section 107A of the Company Guide provides that the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

The continued listing guidelines are set forth under Sections 1001 through 1003 of Part 10 to the Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced as to make further dealings on the Exchange inadvisable. With respect to the continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv) of the Company Guide. Section 1003(b)(iv)(A) of the Company Guide provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held less than $400,000.

The Notes will be registered under Section 12 of the Act.[15]

Lastly, in conjunction with the Amex's Hybrid Approval Order,[16] the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. In particular, with respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.[17]

Rules Applicable to the Trading of the Notes

Because the Notes are linked, in part to a portfolio consisting of equity securities, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, "Duty to Know and Approve Customers," the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[18] Second, the Notes will be subject to the equity margin rules of the Exchange. Third, as discussed earlier, in conjunction with the Amex's Hybrid Approval Order,[19] the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes.

Furthermore, the Amex represents that its surveillance procedures are adequate to properly monitor the trading of Balanced Strategy Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities to monitor trading in the Notes.[20] In addition, the Amex also has a general policy that prohibits the distribution of material, non-public information by its employees.[21]

Disclosure and Dissemination of Information

The Amex will issue a circular to the membership providing guidance with regard to member firm compliance

immediately senior issue; or (ii) a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a pari passu or junior issue.

[15] *See* December 7 Conversation, *supra* note 4.

[16] *See* note 5, *supra*.

[17] *See* Amendment No. 1, *supra* note 3.

[18] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[19] *See* note 5, *supra*.

[20] *See* Amendment No. 1, *supra* note 3.

[21] Id.

responsibilities when handling transactions in the Notes and explaining the special characteristics and risks of the Notes. Furthermore, Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Merrill Lynch's current procedure involving primary offerings.[22]

(2) Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[23] in general, and furthers the objectives of Section 6(b)(5)[24] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market an a national market system.

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 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 and Amendment No. 1 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2001–91 and should be submitted by January 16, 2002.

IV. Commissions Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Amex has asked the Commission to approve the proposal and Amendment No. 1 on an accelerated basis because the Amex believes that the Notes are similar to several instruments listed and currently trading on the Amex.[25]

The Commission finds that the proposed rule change, as amended, 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 requirements of Section 6(b)(5) of the Act,[26] in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.[27] The Commission believes that the Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate in the U.S. domestic equity and bond markets.[28] Specifically, as described more fully above, at maturity, or upon exchange, the holder of a Note will receive an amount based upon the percentage change in the value of the Balanced Strategy Index, less the index adjustment factor.

The Notes are debt instruments whose price will be derived from and based upon the value of the Balanced Strategy Index. In addition, as discussed more fully above, the Notes do not guarantee any return of principal at maturity. Thus, if the Balanced Strategy Index has declined at maturity, the holder of the Note may receive significantly less than the original public offering price of the Note. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return on the Notes is derivatively priced and based upon the performance of an index of securities and because the Notes are instruments that do not guarantee a return of principal, there are several issues regarding trading of this type of product. For the reasons discussed below, the Commission believes that the Amex's proposal, as amended, adequately addresses the concerns raised by this type of product.

First, the Commission notes that the protections of Section 107A of the Company Guide were designed to address the special concerns attendant to the trading of hybrid securities like the Notes. In particular, by imposing the hybrid listing standards, heighted suitability for recommendations,[29] and compliance requirements, noted above, the Commission believes that the Exchange has adequately addressed the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that the Amex will distribute a circular to its membership that provides guidance regarding member firm compliance responsibilities and requirements, including suitability recommendations, and highlights the special risks and characteristics associated with the Notes. Specifically, among other things, the circular notes that the issuer will make no payments prior to maturity, that the value of the Balanced Strategy Index must increase for holders to receive at least the original public offering price of $10 per Note upon exchange or at maturity, and that holders will receive less, and possibly

[22] Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Cyndi Nguyen, Attorney, Division, Commission, on December 13, 2001 ("December 13 Conversation").

[23] 15 U.S.C. 78f(b)

[24] 15 U.S.C. 78f(b)(5).

[25] *See* Securities Exchange Act Release Nos. 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (File No. SR–Amex–2001–40) (approving the listing and trading of non-principal protected exchangeable notes linked to the Institutional Holdings Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (File No. SR–Amex–2001–39) (approving the listing and trading of non-principal protected exchangeable notes linked to the Industrial 15 Index); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (File No. SR–Amex–2001–28) (approving the listing and trading of non-principal protected exchangeable notes linked to the Select Ten Index); and 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (File No. SR–Amex–99–42) (approving the listing and trading of notes linked to a basket of no more than twenty equity securities). *See also* 1999 Order, *supra* note 12

[26] 15 U.S.C. 78f(b)(5).

[27] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[28] *See* Amendment No. 1, *supra* note 3. Although holders of the Notes will not receive interest payments during the term of the Notes, holders of the Notes will have the right, during a two-week period in the designated month each year, to require the issuer to repurchase the Notes at a redemption amount based on the value of the Balanced Strategy Index at the repurchase date.

[29] As discussed above, the Amex will require members, member organizations, and employees thereof recommending a transaction in the Notes to: (1) determine that the transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the transaction. *See* Amendment No. 1, *supra* note 3.

significantly less than $10 per Note if the Balanced Strategy Index declines. Distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the Notes and who are able to bear the financial risks associated with transactions in the Notes will trade the Notes. In addition, the Commission notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.[30]

Second, the Commission notes that the final rate of return on the Notes depends, in part, upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide, which provide that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities. In addition, the Exchange's hybrid listing standards further require that the Notes have at least $4 million in market value. Financial information regarding Merrill Lynch will be publicly available.

Third, the Notes will be registered under Section 12 of the Act. As noted above, the Amex's existing equity floor trading rules will apply to the Notes, which will be subject to the Amex's equity margin rules. The Amex will rely on its existing surveillance procedures for equities to monitor trading in the Notes.[31]

Fourth, the Commission has systemic concern that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[32] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

Fifth, the Commission believes that the listing and trading of the Notes should not unduly impact the market for the securities underlying the Balanced Strategy Index or raise manipulative concerns. As discussed more fully above, the Balanced Strategy Index is based upon the return of the Underlying Indexes. Each of the Underlying Indexes will have a weighting of 50% of the weight of the Balanced Strategy Index, initially and immediately following each annual rebalancing of the Balanced Strategy Index. Both of the Underlying Indexes are well-established and broad-based,[33] and the Commission has concluded previously that the Underlying Indexes are not readily susceptible to manipulation. For example, in the 1999 Order, the Commission found that the U.S. Bond Index, and the other bond indexes reviewed in the 1999 Order, were not readily susceptible to manipulation based on the indexes' issue size, market value, and the representative nature of different sectors of the fixed income securities market.[34] Similarly, in approving a proposal to eliminate position and exercise limits for S&P 500 Index options, S&P 100 Index options, and Dow Jones Industrial Index options, the Commission noted that the enormous capitalization of and deep, liquid markets for the underlying securities contained in the indexes significantly reduced concerns regarding market manipulation or disruption in the underlying market.[35] In addition, the Amex's surveillance procedures should serve to deter as well as detect any potential manipulation of the Balanced Strategy Index.

Finally, the Commission notes that the value of the Balanced Strategy Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that disseminating the value of the Balanced Strategy Index at least once every fifteen seconds throughout the trading date is useful and will benefit investors in the Notes.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the day of publication of notice of filing thereof in the **Federal Register.** The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal, as amended, will allow investors to begin trading the Notes promptly. Amendment No. 1 strengthens the Amex's proposal by, among other things, noting the surveillance procedures that will apply to trading in the Notes and requiring members, member organizations, and employees thereof recommending transactions in the Notes to: (1) Determine that the transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the transaction. Accordingly, the commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act[36] to approve the proposal and Amendment No. 1 on an accelerated basis.

The Commission is approving the Amex's proposed listing standards for the Notes. The commission specifically notes that, notwithstanding approval of the listing standards for the Notes, other similarly structured products will require review by the Commission prior to being listed and traded on the Amex.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[37], that the proposed rule change, as amended, (File No. SR-Amex-2001-91) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-31564 Filed 12-21-01; 8:45 am]

BILLING CODE 8010-01-M

[30] *See* December 13 Conversation, *supra* note 22.

[31] *See* Amendment No. 1, *supra* note 3.

[32] *See, e.g.*, Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving File No. SR-NASD-2001-73) (approving the listing and trading of notes issued by Morgan Stanley Dean Witter & Co. whose return is based on the performance of the Nasdaq-100 Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving File No. SR-Amex-2001-40) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving File No. SR-Amex-96-27) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a weighted portfolio of healthcare/biotechnology industry securities).

[33] *See* Order, *supra* note 12 (concluding that the U.S. Bond Index is well-established and broad-based); and Securities Exchange Act Release No. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (order approving File No. SR-CBOE-83-8)(noting that the S&P 500 Index is a broad-based index).

[34] *See* 1999 Order, *supra* note 12.

[35] *See* Securities Exchange Act Release No. 44994 (October 26 2001), 66 FR 55722 (November 2, 2001) (order approving File No. SR-CBOE-2001-22) ("2001 Order"). In the 2001 Order, the Commission also noted that, as of October 2001, the market capitalization of the S&P 500 Index was $9.81 trillion.

[36] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45162; File No. SR-NASD-2001-89]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Effectiveness of the Pilot Injunctive Relief Rule

December 18, 2001.

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 7, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by NASD Dispute Resolution. For the reasons discussed below, the Commission is publishing this notice is solicit comments on the proposed rule change and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing to amend Rule 10335 of the Code of Arbitration ("Code") of the NASD, to extend the pilot injunctive relief rule for six months, pending Commission action on a pending rule filing, SR–NASD–00–02, to amend Rule 10335 and make it a permanent part of the Code. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

1000. Code of Arbitration Procedure

* * *

10335. Injunctions

(a)–(h) Unchanged.

(i) Effective Date.

This Rule shall apply to arbitration claims filed on or after January 3, 1996. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule. This Rule shall expire on [January 4, 2002] *July 1, 20002,* unless extended by the Association's Board of Governors.

* * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Dispute Resolution 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. NASD Dispute Resolution 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 10335, the NASD's pilot injunctive relief rule, provides procedures for obtaining interim injunctive relief in controversies involving member firms and associated persons in arbitration. The rule has primarily been used in "raiding cases," or cases involving the transfer of an employee from one firm to another firm. Rule 10335 took effect on January 3, 1996, for a one-year pilot period. The SEC has periodically extended the initial pilot period in order to permit the NASD to assess the effectiveness of the rule. The pilot rule is currently due to expire on January 4, 2002.[3]

NASD Dispute Resolution believes that it is in the interest of members and associated persons that the effectiveness of the pilot rule remain uninterrupted pending final Commission action on SR–NASD–00–02. Therefore, NASD Dispute Resolution believes that the pilot rule should be extended to July 1, 2002, or such earlier time as permitted by Commission action on the permanent rule filing, which makes clear that, if approved, the amended rule would supersede the pilot rule in its entirety.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that the Association's rules 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Dispute Resolution does not believe that the proposed rule change will result in any 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. 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.[5] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–89 and should be submitted by January 16, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

NASD Dispute Resolution has requested that the Commission find good cause pursuant to Section 19(b)(2)[6] for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder.[7] Rule 10335 is intended to provide a pilot system within the NASD arbitration forum to process request for temporary injunctive relief. Rule 10335 is intended principally to facilitate the disposition of employment disputes,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On January 12, 2000, NASD Regulation, Inc. filed a proposed rule filing, SR–NASD–00–02 to amend Rule 10335 and to make it a permanent part of the Code. *See* Securities Exchange Act Release No. 42606 (April 3, 2000), 65 FR 18405 (April 7, 2000) (File No. NASD–00–02). The NASD has amended the rule filing on several occasions, most recently on August 9, 2001. The most recent amendments were published for comment on October 25, 2001. *See* Securities Exchange Act Release No. 44950 (October 18, 2001), 66 FR 54041 (October 25, 2001).

[4] 15 U.S.C. 78*o*–3(b)(6).

[5] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78*o*–3.

and related disputes, concerning members who file for injunctive relief to prevent registered representatives from transferring their client accounts to their new firms.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will permit members to have the benefit of injunctive relief in arbitration pending Commission action on the rule filing proposing to amend Rule 10335 and make it a permanent part of the Code.[8] The Commission believes, therefore, that granting accelerated approval of the proposed rule change is consistent with Section 15A of the Act.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2001–89) is approved on an acclerated basis through July 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–31565 Filed 12–21–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45138; File No. SR–NYSE–2001–42]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the New York Stock Exchange, Inc., Establishing the Fees for NYSE OpenBook™

December 18, 2001.

Correction

In FR Document 01–30879 beginning on page 64895 for Friday, December 14, 2001, the release number for File No. SR–NYSE–2001–42 should read 34–45138.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–31566 Filed 12–21–01; 8:45 am]

BILLING CODE 8010–01–M

[8] *See supra* note 3.

[9] 15 U.S.C. 78*o*–3

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12)

[1] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before February 25, 2002.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Saunders Miller, Senior Policy Advisor, Office of Investment Division, Small Business Administration, 409 3rd Street, SW., Suite 6300, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Saunders Miller, Senior Policy Advisor, (202) 205–3545 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: SBIC License Application, Part, 1 Incorporating the Management Assessment Questionnaire.

Form No: 2181.

Description of Respondents: Applicants for SBIC Licenses.

Annual Responses: 90.

Annual Burden: 160.

Title: SBIC License Application, Part, II, and Exhibits to the License Application.

Form No: 2182.

Description of Respondents: Applicants for SBIC Licenses.

Annual Responses: 60.

Annual Burden: 160.

Title: SBIC License Application, Part, III, Exhibits to the Management Assessment Questionnaire.

Form No: 2183.

Description of Respondents: Applicants for SBIC Licenses.

Annual Responses: 90.

Annual Burden: 160.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–31649 Filed 12–21–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9N84]

State of Wyoming; Disaster Loan Area

Park County and the contiguous Counties of Big Horn, Fremont, Hot Springs, Teton and Washakie in the State of Wyoming; and Carbon, Gallatin and Park Counties in the State of Montana constitute an economic injury disaster loan area as a result of a forest fire that closed the east entrance to Yellowstone National Park from July 29 through August 13, 2001. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on September 17, 2002 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, FT. Worth, TX 76155.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent. The number assigned for economic injury for this disaster is 9N8400 for the State of Wyoming and 9N8500 for the State of Montana.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: December 17, 2001.

Hector V. Barreto,

Administrator.

[FR Doc. 01–31648 Filed 12–21–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region IV—North Florida District Advisory Council; Public Meeting

The Small Business Administration Region IV North Florida District Advisory Council, located in the geographical area of Jacksonville, Florida, will hold a public meeting at 11 a.m. Eastern Standard Time on Thursday, January 17, 2002, at the Gainesville Technology Enterprise Center, 2153 Hawthorne Rd, Gainesville, FL 32641, to discuss such matters as may be presented by Advisory Council members, staff of the Small Business Administration, and/or others present.

Anyone wishing to make an oral presentation to the Board must contact Wilfredo J. Gonzalez, District Director, in writing by letter or fax no later than January 10th, 2002, in order to be put on the agenda. Please direct requests to:

Wilfredo J. Gonzalez, District Director, U.S. Small Business Administration, North Florida District Office, 7825 Baymeadows Way, Suite 100B, Jacksonville, Florida 32256, (904) 443–1900 phone (904) 443–1980 fax; *wilfredo.gonzalez@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Lola Kress, U.S. Small Business Administration, 7825 Baymeadows Way, Suite 100–B, Jacksonville, Florida 32256–7504, telephone (904) 443–1933.

Steve Tupper,

Committee Management Officer.

[FR Doc. 01–31650 Filed 12–21–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3860]

Office of the Coordinator for Counterterrorism; Designation of Foreign Terrorist Organizations

AGENCY: Department of State.

ACTION: Designation.

Pursuant to section 219 of the Immigration and Nationality Act ("INA"), as added by the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104–132, § 302, 110 Stat. 1214, 1248 (1996), and amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009 (1996), and by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, the Secretary of State hereby designates, effective December 24, 2001, the following organizations as foreign terrorist organizations:

Jaish e-Mohammed

also known as the Army of Mohammed

also known as Mohammed's Army

also known as Tehrik ul-Furqaan

Lashkar e-Tayyiba

also known as the LT

also known as Lashkar e-Toiba

also known as Lashkar-I-Taiba

also known as Army of the Righteous

Dated: December 18, 2001.

Mark Wong,

Acting Coordinator for Counterterrorism, Department of State.

[FR Doc. 01–31588 Filed 12–21–01; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 3832]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9 a.m. on Friday, January 18, 2002, in Room 6319, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. This meeting will discuss the upcoming 45TH Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held on July 22–26, 2002, at the IMO Headquarters in London, England.

Items of discussion will include the following:

a. Harmonization of damage stability provisions in the IMO instruments,

b. Revision of technical regulations of the 1966 International Load Line Convention,

c. Revisions to the Fishing Vessel Safety Code and Voluntary Guidelines,

d. Large Passenger Vessel Safety,

e. Matters relating to Bulk Carrier Safety, and

f. High Speed Craft Code amendments and model tests

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Paul Cojeen, U.S. Coast Guard Headquarters, Commandant (G–MSE–2), Room 1308, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: December 12, 2001.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 01–31603 Filed 12–21–01; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. (Section 182 is commonly referred to as the "Special 301" provisions in the trade act.) In addition, the USTR is required to determine which of these countries should be identified as Priority Foreign Countries. Acts, policies or practices which are the basis of a country's identification as a priority foreign country are normally the subject of an investigation under the Section 301 provisions of the trade act. Section 182 of the Trade Act contains a special rule for the identification of actions by Canada affecting United States cultural industries.

USTR requests written submissions from the public concerning foreign countries' acts, policies, and practices that are relevant to the decision whether particular trading partners should be identified under Section 182 of the Trade Act.

DATES: Submissions must be received on or before 12 noon on Friday, February 15, 2002.

ADDRESSES: 1724 F. Street, N.W., Room 1, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Assistant U.S. Trade Representative for Intellectual Property (202) 395–6864; Kira Alvarez, Director for Intellectual Property (202) 395–6864; Stephen Kho or Victoria Espinel, Assistant General Counsels (202) 395–7305, Officer of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Pursuant to Section 182 of the Trade Act, the USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as Priority Foreign Countries. Acts, policies or practices that are the basis of a country's designation as a Priority Foreign country are normally the subject of an investigation under the section 301 provisions of the Trade Act.

USTR may not identify a country as a Priority Foreign Country if its entering into good faith negotiations, or making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

In identifying countries that deny adequate and effective protection of intellectual property rights in 2001, USTR will continue to pay special attention to other countries' efforts reduce piracy of optical media (music CDs, video CDs, CD–ROMs, and DVDs) and prevent unauthorized government use of computer software. USTR will also focus on countries' compliance with their TRIPS obligations, which came due on January 1, 2000.

Section 182 contains a special rule regarding actions of Canada affecting United States cultural industries. The USTR is obligated to identify any act, policy or practice of Canada which affects cultural industries, is adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). Any such act, policy or practice so identified shall be treated the same as an act, policy or practice which was the basis for a country's identification as a Priority Foreign Country under Section 182(a)(2) of the trade Act, unless the United States has already taken action pursuant to Article 2106 of the NAFTA.

USTR must make the above-referenced identifications within 30 days after publication of the National Trade Estimate (NTE) report, i.e., no later that April 30, 2002.

Requirements for Comments

Comments should include a description of the problems experienced and the effect of the acts, policies and practices on U.S. industry. Comments should be as detailed as possible and should provide all necessary information for assessing the effect of the acts, policies and practices. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be in english and provided in twenty copies. A submitter requesting that information contained in a comment be treated as confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "business confidential" in a contrasting color ink at the top of each page of each copy. A non-confidential version of the comment must also be provided.

All comments should be sent to Brenda Webb, special Assistant to the Section 301 committee, 1724 F Street, NW., Room 1, Washington, DC 20508, and must be received no later than 12 noon on Friday, February 15, 2002.

Public Inspection of Submissions

Within one business day of receipt, non-confidential submissions will be placed in a public file, open for inspection at the USTR reading room, Office of the United States Trade Representative, Annex Building, 1724 F Street, NW, room 1, Washington, DC. An appointment to review the file may be made by calling Brenda Webb, (202) 395–6186. The USTR reading room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Joseph Papovich,

Assistant USTR for Services, Investment and Intellectual Property.

[FR Doc. 01–31605 Filed 12–21–01; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–11192]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ADAMANT.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before January 25, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2001–11192. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application. and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: ADAMANT. *Owner:* Marco Basich.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Length 32' LOA; Beam 12'; Tonnage 18 tons (net tonnage 15 tons; LBO 7.3)"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Vessel has been in bare-boat charter (time-share lease program) since going into the water in February, 1987. Application is for purpose of changing use to captained charter of small passenger vessel or uninspected passenger vessel." "Coastal and inland waters of Washington State * * *"

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1986. Place of construction: Kaohsiung, Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This vessel has been continuously involved in a bare-boat charter program since 1987. My request is to simply add captaining (and potentially additional crew) for up to 12 passengers, which should provide no adverse impact on boat chartering industry. Size of vessel dictates day trips and weekly charters which will not adversely affect commuter ferry or cruise ship industries."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This waiver should have no impact on US shipyards. Production on this vessel ceased in Taiwan an estimated ten years ago. The vessel will continue to be operated for charter in the same waters, with the addition of including the owner as a licensed captain."

Dated: December 19, 2001.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–31638 Filed 12–21–01; 8:45 am]

BILLING CODE 4910–81–P

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 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. 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 mode of transportation, etc.) are described in footnotes to the application number. Applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before January 10, 2002.

ADDRESS COMMENT TO: Records Center, 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 CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 17, 2001.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
3216–M	Solvay Fluorides St. Louis, MO (See Footnote 1).	3216.	
8215–M	Olin Corp., Brass & Winchester, Inc. East Alton, IL (See Footnote 2).	8215.	
10442–M	Kennedy Space Center Kennedy Space Center, FL (See Footnote 3).	10442.	
10798–M	Chemetall Foote Corporation Kings Mountain, NC (See Footnote 4).	10798.	
10929–M	Bulkmatic Transport Company Jersey City, NJ (See Footnote 5).	10929.	
11185–M	Medical Waste Solutions, Inc. Gary, IN (See Footnote 6).	11185.	
11770–M	Gas Cylinder Technologies, Inc. Tecumseh, Ontario N8N 2M4 Canada (See Footnote 7).	11770.	
11911–M	RSPA–97–2735	Transfer Flow, Inc. Chico, CA (See Footnote 8)	11911
11924–M	RSPA–97–2744	Wrangler Corp., A Division of Lapoint Industries Auburn, ME (See Footnote 9).	11924
12817–M	RSPA–01–10513	Phibro-Tech, Inc. Fort Lee, NJ (See Footnote 10)	12817

(1) To modify the exemption to authorize the transportation of a Division 2.3 material in non-DOT specifications multi-unit tank car tanks.

(2) To modify the exemption to authorize the addition of a Division 1.1D material and for Division 1.1A and 1.1D materials to be transported in a newly designed motor vehicle (trailer).

(3) To modify the exemption to authorize an alternative shipping paper and container marking description for the transportation of certain Division 1.3C waste explosive substances in specifically authorized packagings.

(4) To modify the exemption to authorize the transportation of a Division 4.2 and an additional Class 3 material in DOT Specification tank cars.

(5) To modify the exemption to authorize the transportation of additional Class 3 materials in DOT Specification tank cars.

(6) To modify the exemption to more accurately describe the non-DOT specifications bulk packaging used for the transportation of Division 6.2 materials.

(7) To modify the exemption to authorize an additional chemistry composition for the manufacture of non-DOT specification cylinders, comparable to DOT 3E, for the transportation of Division 2.1, 2.2 and 2.3 materials.

(8) To modify the exemption to authorize an increased water capacity range of 15–105 gallons for the non-DOT specification metal refueling tanks containing Class 3 materials and the inclusion of a 12-volt fuel pump system.

(9) To modify the exemption to authorize two additional DOT Specification containers for use as outer packaging for lab pack applications transporting various classes of hazardous wastes.

(10) To reissue the exemption originally issued on an emergency basis authorizing the reuse of Specification UN 1H1 non-removable head plastic drums for the transportation of certain Class 8 materials to Environmental Protection Agency licensed treatment, storage or disposal facilities.

[FR Doc. 01–31656 Filed 12–21–01; 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 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 of the "Nature of Application" portion of the table below as follows: 1—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 25, 2002.

ADDRESSES COMMENTS TO: Records Center, 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 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 or at *http://dms.dot.gov.*

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 18, 2001.

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
12865–N	RSPA–01–11013	BOC Gases, Riverton, NJ.	49 CFR 173.301(j)	To authorize the transportation in commerce of non-DOT specification cylinders for export containing various compressed gases without pressure relief devices. (Modes 1, 3.)
12867–N	RSPA–01–11076	G.L.I. Citergaz, 964 Civray, FR.	49 CFR 178.245–1(a).	To authorize the manufacture, marking, sale and use of DOT Specification 51 steel portable tanks permanently mounted in an ISO frame for use in transporting Division 2.1 and 2.2 materials. (Modes 1, 2, 3.)
12868–N	RSPA–01–11075	Anderson Development Company, Adrian, MI.	49 CFR 173.301(j)	To authorize the transportation in commerce of non-DOT specification cylinders for export containing various compressed gases without pressure relief devices. (Modes 1, 3.)
12869–N	RSPA–01–11074	Praxair, Inc., Danbury, CT.	49 CFR 173.301(j)	To authorize the transportation in commerce of non-DOT specification cylinders for export containing various compressed gases without pressure relief devices. (Modes 1, 3.)
12871–N	RSPA–01–11072	Southern California Edison, San Clemente, CA.	49 CFR 173.403, 173.427(a), 173.427(b)(c).	To authorize the one-time transportation of a nuclear generating-station reactor pressure vessel package transport system to a burial site. (Modes 1, 2, 3.)
12872–N	RSPA–01–11077	Southern California Edison, San Clemente, CA.	49 CFR 173.403	To authorize the one-time transportation in commerce of specially designed equipment containing Class 7 radioactive material. (Mode 2.)
12873–N	RSPA–01–11099	Balchem Corporation, Slate Hill, NY.	49 CFR 172.302(c), 174.67(i)&(j).	To authorize rail cars to remain attached during unloading of Division 2.1 and 2.3 hazardous materials without the physical presence of an unloader. (Mode 2.)

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12874–N	RSPA–01–11103	Zomeworks Corporation, Albuquerque, NM.	48 CFR 171 to 180.	The authorize the transportation in commerce of machine components that are charged with non-flammable, non-toxic refrigerant gas without packaging or communication requirements. (Modes 1, 2, 3, 4, 5.)
12876–N	RSPA–01–11098	Asai Glass Fluoropolymers USA, Inc., Bayonne, NJ.	49 CFR 174.67(i)&(j).	To authorize rail cars containing a Division 2.2 material to remain standing while connected without the physical presence of an unloader. (Mode 2.)
12877–N	RSPA–01–11119	BAE Systems, Pomona, CA.	49 CFR 172.400(a), 172.500(a), 173.211(a), 175.3.	To authorize the transportation in commerce of cesium, Division 4.3, without required labeling and placarding in specially designed packaging to be used on military aircraft. (Modes 1, 4, 5.)
12879–N	RSPA–01–11095	Millennium Speciality Chemicals, Jacksonville, FL.	49 CFR 172.514	To authorize the transportation in commerce of portable tanks and IBCs containing combustible liquids without required placards when placed in closed sealed freight containers that are properly placarded. (Modes 1, 3.)
12880–N	RSPA–01–11100	Northrop Grumman Corporation, Baltimore, MD.	49 CFR 172.101. Col.(9)(b), 173.302, 175.3.	To authorize the transportation in commerce of a specially designed device consisting of a non-DOT specification cylinder containing 25 grams of Division 2.3 material. (Modes 1, 3, 4.)

[FR Doc. 01–31657 Filed 12–21–01; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34127]

Parksierra Corporation (Successor-in-Interest to California Northern Railroad Company Limited Partnership)—Trackage Rights Exemption-North Coast Railroad Authority

AGENCY: Surface Transportation Board.
ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval requirements of 49 U.S.C. 11323–25 for ParkSierra Corporation, successor-in-interest to California Northern Railroad Company Limited Partnership, to acquire from North Coast Railroad Authority incidental trackage rights over a 10.5-mile segment of line in northern California between Schellville, milepost NWP 40.60 (SP 72.50), and Lombard, milepost SP 62.00, subject to employee protective conditions.

DATES: This exemption is effective on January 10, 2002. Petitions to stay must be filed by January 7, 2002. Petitions to reopen must be filed by January 22, 2002.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34127 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative, Troy W. Garris, 1300 19th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dã 2 Dã Legal, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339.]

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: December 17, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–31644 Filed 12–21–01; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 225X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Pike County, KY

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 5.6 miles of its line of railroad between milepost HL–15.0 at Bane and milepost HL–20.6 at Levisa Spur, in Pike County, KY. The line traverses United States Postal Service Zip Code 41501.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91

(1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 25, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 7, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 15, 2002, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, Esq., Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by December 31, 2001. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by December 26, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: December 18, 2001.

Vernon A. Williams,

Secretary.

[FR Doc. 01–31645 Filed 12–21–01; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–120168–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–120168–97 (TD 8798), Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility.

DATES: Written comments should be received on or before February 25, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility.

OMB Number: 1545–1570.

Regulation Project Number: REG–120168–97.

Abstract: Income tax return preparers who satisfy the due diligence requirements in this regulation will avoid the imposition of the penalty section 6695(g) of the Internal Revenue Code for returns or claims for refund due after December 31, 1997. The due diligence requirements include soliciting the information necessary to determine a taxpayer's eligibility for, and amount of, the Earned Income Tax Credit and the retention of this information.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 5 hours, 4 minutes.

Estimated Total Annual Burden Hours: 507,136.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 17, 2001.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 01–31651 Filed 12–21–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Special Enrollment Examination Advisory Committee; Notice of Meeting

AGENCY: Internal Revenue Service, Office of Director of Practice, Treasury

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: Notice is given of a meeting of the Special Enrollment Examination Advisory Committee.

DATES: The meeting will be held Friday, January 18, 2002 (8:30 a.m. to 11 a.m.) Written requests to speak at the meeting or to attend the meeting must be received no later than January 7, 2002.

ADDRESSES: The meeting will be held at the Radisson Hotel Opryland, 2401 Music Valley Drive, Nashville, Tennessee 37214. Written requests to speak at the meeting or to attend the meeting must be mailed, faxed, or E-mailed to: Internal Revenue Service, Office of Director of Practice, N:C:SC:DOP, Attn: Kathy Hughes, Designated Federal Officer, 1111 Constitution Avenue, NW., Washington, DC 20224; fax number 202–694–1934; E-mail address *Kathy.E.Hughes@irs.gov*.

FOR FURTHER INFORMATION CONTACT: Kathy Hughes, Designated Federal Officer, Special Enrollment Examination Advisory Committee, at 202–694–1851.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to cover the following agenda:

Friday, January 18, 2002, 8:30 a.m.–11 a.m.

Public Session: Discussion of Continuing Professional Education Courses

Beginning at 10 a.m. on Friday, January 18, 2002, interested persons may speak at the meeting in accordance with the following limitations: (1) Speakers' remarks must be germane to the topic listed above or germane to the Enrolled Agent Program; and (2) remarks must be limited to no more than 10 minutes. Persons wishing to speak must send Kathy Hughes, the Designated Federal Officer, a written request and the text or outline of their remarks, prior to the meeting in order to allow for the compilation of a speakers list. Speakers will be entered on the list in order of the receipt of their requests. No more than six requests will be accepted. Speakers will be notified of their position on the list, or in case more than six requests are received, that their requests to speak cannot be granted.

Persons interested in attending the meeting (but not speaking) must also send Kathy Hughes a written request prior to the meeting in order to allow for adequate seating. Every effort will be made to accommodate all requests for attendance.

Written requests to speak and written requests to attend must be received no later than January 7, 2002.

At any time, any interested person may submit to Kathy Hughes a written statement concerning the SEE or the Enrolled Agent Program. Such statements will be considered by the Director of Practice and, at his discretion, may be referred to the Committee for discussion at a later meeting.

Dated: December 17, 2001.

Patrick W. McDonough,

Director of Practice.

[FR Doc. 01–31652 Filed 12–21–01; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
December 26, 2001

Part II

National Indian Gaming Commission

25 CFR Part 542
Minimum Internal Control Standards;
Proposed Rule

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA24

Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: In response to the inherent risks and the need for effective controls in tribal gaming operations, the Commission, in 1999, developed Minimum Internal Control Standards (MICS). Since their original implementation, it has become obvious that the MICS require technical adjustments and revisions so that they may continue to be effective in protecting tribal assets, while allowing tribes to utilize technological advances in the gaming industry. To that end, this proposed rule contains numerous revisions to the Commission's existing MICS that provide clarification of the rules and the flexibility to allow tribal gaming operations to make use of technological advances.

DATES: Submit comments on or before February 25, 2002. At least one public hearing will be held during the comment period.

ADDRESSES: Mail comments to Comments on Proposed Rule on MICS, National Indian Gaming Commission, 1441 L St., NW., Suite 9100, Washington, D.C. 20005, Attn.: Michele F. Mitchell. Comments may also be sent by facsimile to 202–632–7066.

FOR FURTHER INFORMATION CONTACT: Joe H. Smith, 202–632–7003.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1999, the Commission first published its Minimum Internal Control Standards (MICS) as a Final rule. Since this time, as gaming tribes and the Commission gained practical experience with the MICS, it became apparent that some of the standards required clarification or modification to operate as the Commission had intended. Also recognizing the changes and advances in Indian gaming and gaming technology since implementation, on November 27, 2000, the Commission published an advanced notice of proposed rulemaking requesting public comments on the implementation of the MICS.

In keeping with its commitment to consultation and recognizing the government-to-government relationship it shares with tribes, the Commission solicited nominations of individuals interested in serving on an Advisory Committee designed to assist in revisiting the MICS. The ten tribal representatives were selected based on several factors, including the experiences and backgrounds of the individuals nominated, the sizes of their gaming operation(s), the types of games played at their gaming operation(s), and the areas of the country their gaming operation(s) are located. The selection process was a difficult one as numerous highly qualified individuals expressed an interest in serving on this important Committee. As expected, the value added by involving tribal representatives who work daily with the MICS was immeasurable.

Those participating on the behalf of tribes as members of this Advisory Committee were: Jamie Hummingbird, Director, Cherokee Nation Gaming Commission, Cherokee Nation; Patrick H. Lambert, Executive Director, Eastern Band of Cherokee Gaming Commission, Eastern Band of Cherokee; Stephen R. Lewis, Commissioner, Gila River Gaming Commission, Gila River Indian Community; Kristin L. Lumley, Executive Director, Yakama Nation Gaming Commission, Yakama Nation; John Monforte, Executive Director, Acoma Gaming Commission, Pueblo of Acoma; Lisa B. Otipoby, Director, Kaw Nation Enterprise Development Authority, Kaw Nation; Kevin F. O'Toole, Executive Director, Oneida Nation Gaming Commission, Oneida Nation of New York; Sandra Plawman, Treasurer, Ho-Chunk Nation Gaming Commission, Ho-Chuck Nation; Jerome J. Schultze, Director, Morongo Gaming Agency, Morongo Band of Mission Indians; and Saunie K. Wilson, Executive Secretary, Oglala Sioux Tribal Gaming Commission, Oglala Sioux. The Advisory Committee also included the following Commission representatives: Teresa E. Poust, Commissioner; Joe H. Smith, Acting Director of Audits; Michele F. Mitchell, Attorney; Timothy B. Russ, Financial Analyst; and Denise Desiderio, Assistant to the Commission.

The Advisory Committee worked together as a team, guided by a Partnership Agreement developed at its first meeting. An important component of this Partnership Agreement was that decision-making would be done by consensus. Without concurrence from all Committee members on a proposed change, none would be made. As such, the proposed rule represents a series of compromises made by all members of the Advisory Committee after much discussion.

The Commission worked closely with the Advisory Committee to address their concerns about the existing MICS and to address the nearly one hundred comments received in response to the advanced notice of proposed rulemaking. Between May and November 2001, the Commission sponsored six working meetings. During these meetings, every clause of the existing MICS was reviewed and every comment submitted to the Commission was considered. Each meeting was held in a different region of the country, enabling visits to a number of tribal gaming operations. These visits provided valuable, first-hand experience with technological advances and concerns expressed during the comment period. Changes were made to the existing MICS based on comments, input from Advisory Committee members, and data gathered during site visits.

Public Comments and Comments From the Advisory Committee

Authority

Some public commenters and members of the Advisory Committee challenge the Commission's authority to promulgate this rule, particularly as it pertains to class III gaming. Members of the Advisory Committee agreed to participate in the process of revising the MICS, despite their position that the Commission may be without authority to promulgate minimum internal controls for class III gaming. The lengthy discussion regarding authority also included a discussion as to whether the MICS should be promulgated as recommended guidelines versus a mandatory rule. The Commission acknowledges that the participation of tribal representatives in this process does not in any way indicate concurrence in the Commission's determination that it does have the statutory authority to establish and enforce these regulations.

MICS Structure

Several commenters suggested that the Commission develop separate MICS for class II and class III gaming. Along these lines, several Advisory Committee members submitted proposals structuring the MICS so that the document itself was divided into class II and class III MICS. During consideration, a second alternative was discussed: that is, separating the MICS based upon tiers. A common complaint of tier A and B operations is that the existing MICS are confusing as to which requirements apply and which do not. After extensive discussion, the Committee reached consensus on dividing the MICS along tier lines rather

than game classification, recognizing that the requirements placed upon tribal gaming operations should differ based upon their annual gross gaming revenue.

The proposed rule is organized first by category of games, such as bingo, keno, and table games. As with the original rule, the proposed rule is not designed to classify the games into class II or class III. Rather, the MICS address the control issues related to the particular game, regardless of class. Pull tabs, for example, can be played as a class II or a class III game depending on the nature and circumstances of their play. Section 542.8 pertaining to pull tabs applies regardless of whether they are being played as class II or class III. Beginning with Subpart A, the proposed rule is then divided into subparts for each tier. Sections for each tier contain standards applicable only to the tier addressed. The Commission continues to believe that the most effective method of tailoring the MICS for class II and/or class III operations is through the tribal MICS as provided for in section 542.3(c) of this part. Each tribe will continue to adopt MICS that address the specific games that their operations offer.

Tier Structure

Much discussion centered on the specifics of the tier structure itself. Several members of the Advisory Committee submitted proposals adding an additional tier, subtracting an existing tier, or expanding the tier thresholds to an even greater extent than that which was eventually reached by consensus. The tier separation, which is based on annual gross gaming revenues, has been updated and expanded. The Advisory Committee recognizes the positive benefits this action will have on a number of smaller gaming facilities.

Furthermore, an operation that moves from one tier to another will now have nine months from the date of the independent certified public accountant's audit report to achieve compliance with the requirements of the new tier. Previously, no time frame was specified. Changes have also been made throughout the proposed rule altering some of the requirements of the lowered tiered operations.

Recognizing the unique characteristics of the very small gaming operations, an exemption, similar to that for charitable gaming operations, has been extended to gaming operations with annual gross gaming revenues of less than $1 million. Subject to the approval of the Tribal gaining regulatory authority, such gaming operations would need not comply with the MICS as long as the Tribal gaming regulatory authority develops and the gaming operation complies with alternate procedures that protect the integrity of the games offered and safeguard the assets used in connection with the operation. The Advisory Committee asked that the ceiling of $1 million be periodically revisited. The Commission agrees to do so.

Technological Advances in Gaming

One of the most widely mentioned issues was that of technological advances in many areas of gaming. Many commenters felt that the MICS did not adequately address those areas in which new computer technology provides protections that are at least as safe as manual controls. The Committee and the Commission have attempted to address this issue in two ways. First, where necessary, specific sections of the MICS were modified to accommodate technological advances. Second, language was added to each section allowing use of computer applications that provide at least the level of control described by the standards in that section. Such usage would have to first be approved by the Tribal gaming regulatory authority. A variance would not be necessary, so long as the level of control required by the MICS is maintained.

Tribal Gaming Regulatory Authority

One of the terms used throughout the proposed rule is "Tribal gaming regulatory authority." Tribes are responsible for the primary, day-to-day regulation of their operations, and the Committee and the Commission recognize that tribal governments have chosen different approaches of exercising their regulatory authority. A vast majority of tribes have implemented independent tribal gaming commissions, which in most cases the Commission believes to be the most effective way of ensuring the proper regulation of gaming operations. Alternate regulatory structures have also been developed, such as utilizing existing tribal governments, business, or economic development agencies, when determined to be more appropriate to the needs of the tribe. The term "Tribal gaming regulatory authority" is intended to refer to the tribally designated entity responsible for gaming regulation. In order to clarify the role of Tribal gaming regulatory authorities and recognize their immense value, the requirement that the Tribal gaming regulatory authority approve procedures implemented by gaming operation(s) has been added where appropriate.

Variances

Many comments were received on the variance process within the existing MICS. Some indicated confusion as to when a variance is required. Many commenters also questioned whether the Commission or the Tribal gaming regulatory authority should be issuing variances. This section has been restructured providing clarity and recognizing that the Tribal gaming regulatory authority should, in the first instance, determine whether a variance should be granted to a gaming operation. The Commission would then be requested to concur with the granted variance. If the Commission does not agree, it must justify its objection. The new process also allows for an appeal to the full Commission.

Some commenters requested that approved variances be published by the Commission. Because a variance is often based on intimate knowledge of the gaming operation and its procedures, a variance that works for one operation, because of additional factors known to the Tribal gaming regulatory authority, may not be sufficient to meet the control standard in another operation. These initial determinations are best made on an individual basis by tribal regulators who are most familiar with a gaming operation. However, to meet these concerns, the Commission will make variance concurrences available upon request, with the understanding that a variance continues to be applicable only to the operation for which it is granted.

Tribal-State Compacts

Members of the Committee requested clarification on the effect of the NIGC MICS on standards contained within a Tribal-State Compact. Wording was put forth by Advisory Committee members that would require that the standards contained within a tribal-state compact take precedence over these MICS. The Commission was concerned that some compacts, while containing some internal control standards, may not adequately provide enough protection over Indian gaming operations. This section has been re-organized to reflect the Commission and Committee's understanding that this regulation contains minimum standards and does not require that Tribes adopt these exact standards, but that they adopt standards "at least as stringent as those set forth in this part." Section 542.3(c)(1). The language contained in section 542.4 has been modified to reflect this ideal. Instead of requiring that a standard contained in a tribal-state compact be "more stringent than," in order to be applicable, the requirement will now be

that it must only be "as or more stringent than." Therefore, a standard contained within a tribal-state compact, that meets or exceeds the requirements contained herein, shall be an acceptable alternative to the standard set forth in this part.

Accounting Standards

Information was presented to the Committee regarding the addition of accounting standards to the MICS. Data was reviewed from multiple gaming jurisdictions indicating that such standards are a typical element of a gaming regulatory framework. After much consideration, it was the Committee's consensus that the standards should be reserved for the Tribal gaming regulatory authorities to promulgate. Furthermore, it was recommended that the Commission provide guidance to the Tribes in the development of the standards and that such guidance be in the form of a bulletin.

Regulatory Matters

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Commission has determined that this proposed rule does not impose an unfunded mandate on State, local or tribal governments or on the private sector of more than $100 million per year. Thus, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.* The Commission has determined that this proposed rule may have a unique effect on tribal governments, as this rule applies exclusively to tribal governments, whenever they undertake the ownership, operation, regulation, or licensing of gaming facilities on Indian lands as defined by the Indian Gaming Regulatory Act. Thus, in accordance with section 203 of the Unfunded Mandates Reform Act, the Commission has developed a small government agency plan that provides tribal governments with adequate notice, opportunity for "meaningful" consultation, and information, advice and education on compliance.

The Commission's small government agency plan includes: request for public comment on changes needed; formation of a tribal advisory committee; discussions with Tribal leaders and tribal associations; preparation of guidance material and model documents; a public hearing; and technical assistance. During the period from May 2001 through November 2001, the Commission and the Tribal Advisory Committee met six times to develop a regulatory proposal. In selecting committee members, consideration was placed on the applicant's experience in this area, as well as the size of the tribe the nominee represented, geographic location of the gaming operation, and the size and type of gaming conducted. The Commission attempted to assemble a committee that incorporates diversity and is representative of Indian gaming interests. Since beginning formulation of this proposed rule, the Commission spoke at several tribal association meetings. The Commission will develop guidance materials that will include guidelines for CPA firms who must audit gaming operations to determine compliance with Tribal MICS. The Commission also plans to hold a public hearing on the proposed regulation prior to publication of a final rule. The Commission will then meet again with the Tribal Advisory Committee to discuss the public comments that are received as a result of publication of this proposed rule and make a recommendation regarding the final rule. The Commission also plans on continuing its policy of providing technical assistance, through its field offices, to tribes to assist in complying with MICS.

Takings

In accordance with Executive Order 12630, the Commission has determined that this rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed regulation requires an information collection under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*, as did the regulation it replaces. There is no change to the paperwork requirements created by this amendment. The Commission's OMB Control number for this regulation is 3141–0009.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et. seq).

List of Subjects in 25 CFR Part 542

Accounting, Auditing, Gambling, Indian-lands, Indian-tribal government, Reporting and recordkeeping requirements.

For reasons stated in the preamble, the National Indian Gaming Commission proposes to revise 25 CFR Part 542 to read as follows:

PART 542—MINIMUM INTERNAL CONTROL STANDARDS

Subpart A—General

Sec.

Subpart B—Gaming Operations

Authority: 25 U.S.C. 2702(2), 25 U.S.C. 2706(b)(10).

§ 542.1 What does this part cover?

This part establishes the minimum internal control standards for gaming operations on Indian land.

§ 542.2 What are the definitions for this part?

The definitions in this section shall apply to all sections of this part unless otherwise noted.

Account access card means an instrument used to access customer accounts for wagering at a gaming machine. Account access cards are used in connection with a computerized account database.

Accountability means all items of cash, chips, coins, tokens, receivables, and customer deposits constituting the total amount for which the bankroll custodian is responsible at a given time.

Accumulated credit payout means credit earned in a gaming machine that is paid to a customer manually in lieu of a machine payout.

Actual hold percentage means the percentage calculated by dividing the win by the drop or coin-in (number of credits wagered). Can be calculated for individual tables or gaming machines, type of table games or gaming machines on a per day or cumulative basis.

Ante means a player's initial wager or predetermined contribution to the pot before the dealing of the first hand.

Bank or bankroll means the inventory of cash, coins, chips, checks, tokens, receivables, and customer deposits in the cage, pit area, gaming booths, and on the playing tables, and cash in bank which is used to make change, pay winnings, bets, and pay gaming machine jackpots.

Betting station means the area designated in a pari-mutuel area that accepts and pays winning bets.

Betting ticket means a printed, serially numbered form used to record the event upon which a wager is made, the amount and date of the wager, and sometimes the line or spread (odds).

Bill acceptor means the device that accepts and reads cash by denomination in order to accurately register customer credits at a gaming machine.

Bill acceptor canister means the box attached to bill acceptors used to contain cash received by bill acceptors.

Bill acceptor canister release key means the key used to release the bill acceptor canister from the bill acceptor device.

Bill acceptor canister storage rack key means the key used to access the storage rack where bill acceptor canisters are secured.

Bill acceptor drop means cash contained in bill acceptor canisters.

Bill-in meter means a meter included on a gaming machine accepting cash that tracks the number of bills put in the machine.

Boxman means the first-level supervisor who is responsible for directly participating in and supervising the operation and conduct of the craps game.

Breakage means the difference between actual bet amounts paid out by a racetrack to bettors and amounts won due to bet payments being rounded up or down. For example, a winning bet that should pay $4.25 may be actually paid at $4.20 due to rounding.

Cage means a secure work area within the gaming operation for cashiers and a storage area for the gaming operation bankroll.

Cage accountability form means an itemized list of the components that make up the cage accountability.

Cage credit means advances in the form of cash or gaming chips made to customers at the cage. Documented by the players signing an IOU or a marker similar to a counter check.

Cage marker form means a document, usually signed by the customer, evidencing an extension of credit at the cage to the customer by the gaming operation.

Calibration module means the section of a weigh scale used to set the scale to a specific amount or number of coins to be counted.

Call bets means a wager made without cash or chips, reserved for a known patron and includes marked bets (which are supplemental bets made during a hand of play). For the purpose of settling a call bet, a hand of play in craps is defined as a natural winner (e.g., seven or eleven on the come-out roll), a natural loser (e.g., a two, three or twelve on the come-out roll), a seven-out, or the player making his point, whichever comes first.

Card game means a game in which the gaming operation is not party to wagers and from which the gaming operation receives compensation in the form of a rake, a time buy-in, or other fee or payment from a player for the privilege of playing.

Card room bank means the operating fund assigned to the card room or main card room bank.

Cash-out ticket means an instrument of value generated by a gaming machine representing a cash amount owed to a customer at a specific gaming machine. This investment may be wagered at other machines by depositing the cash-out ticket in the machine document acceptor.

Chips mean cash substitutes, in various denominations, issued by a gaming establishment and used for wagering.

Coin-in meter means the meter that displays the total amount wagered in a gaming machine that includes coins-in and credits played.

Coin meter count machine means a device used in a coin room to count coin.

Coin room means an area where coins and tokens are stored.

Coin room inventory means coins and tokens stored in the coin room that are generally used for gaming machine department operation.

Commission means the National Indian Gaming Commission.

Complimentary means service or item provided to an individual for a legitimate business purpose.

Count means the total funds counted for a particular game, coin-operated gaming device, shift, or other period.

Count room means a room where the coin and cash drop from gaming machines, table games, or other games are transported to and counted.

Count team means personnel that perform either the count of the gaming machine drop and/or the table game drop.

Counter check means a form provided by the gaming operation for the customer to use in lieu of a personal check.

Credit means the right granted by a gaming operation to a patron to defer payment of debt or to incur debt and defer its payment.

Credit limit means the maximum dollar amount of credit assigned to a customer by the gaming operation.

Credit slip means a form used to record either:

(1) The return of chips from a gaming table to the cage; or

(2) The transfer of IOUs, markers, or negotiable checks from a gaming table to a cage or bankroll.

Customer deposits means the amounts placed with a cage cashier by customers for the customers' use at a future time.

Deal means a specific pull tab game in which each pull tab is numerically sequenced.

Dealer means an employee who operates a game, individually or as a part of a crew, administering house rules and making payoffs.

Dedicated camera means a video camera required to continuously record a specific activity.

Deskman means a person who authorizes payment of winning tickets and verifies payouts for keno games.

Document acceptor means the device integrated into each gaming machine that reads bar codes on coupons and cash-out tickets.

Draw ticket means a blank keno ticket whose numbers are punched out when balls are drawn for the game. Used to verify winning tickets.

Drop (for gaming machines) means the total amount of cash, cash-out tickets, or coupons removed from the drop bucket and bill acceptor canister.

Drop (for table games) means the total amount of cash and chips contained in the drop box, plus the amount of credit issued at the table.

Drop box means a locked container affixed to the gaming table into which the drop is placed. The game type, table number, and shift are indicated on the box.

Drop box contents keys means the key used to open drop boxes.

Drop box release keys means the key used to release drop boxes from tables.

Drop box storage rack keys means the key used to access the storage rack where drop boxes are secured.

Drop bucket means a container located in the drop cabinet (or in a secured portion of the gaming machine in coinless/cashless configurations) for the purpose of collecting coins, tokens, cash-out tickets, and coupons from the gaming machine.

Drop cabinet means the wooden or metal base of the gaming machine that contains the gaming machine drop bucket.

Earned and unearned take means race bets taken on present and future race events. Earned take means bets received on current or present events. Unearned take means bets taken on future race events.

EPROM means erasable programmable read-only memory or other equivalent game software media.

Fill means a transaction whereby a supply of chips or coins and tokens is transferred from a bankroll to a table game, coin-operated gaming device, bingo or keno department.

Fill slip means a document evidencing a fill.

Flare means the information sheet provided by the manufacturer that sets forth the rules of a particular pull tab game and that is associated with a specific deal of pull tabs. The flare shall contain the following information:

(1) Name of the game;

(2) Manufacturer name or manufacturer's logo;

(3) Ticket count; and

(4) Prize structure, which shall include the number of winning pull tabs by denomination, with their respective winning symbols, numbers or both.

Future wagers means bets on races to be run in the future (e.g., Kentucky Derby).

Game server means an electronic selection device, utilizing a random number generator.

Gaming machine means an electronic or electromechanical machine which contains a microprocessor with random number generator capability which allows a player to play games of chance, some of which may be affected by skill, which machine is activated by the insertion of a coin, token or cash, or by the use of a credit, and which awards game credits, cash, tokens, or replays, or a written statement of the player's accumulated credits, which written statements be redeemable for cash.

Gaming machine analysis report means a report prepared that compares theoretical to actual hold by a gaming machine on a monthly or other periodic basis.

Gaming machine booths and change banks means a booth or small cage in the gaming machine area used to provide change to players, store change aprons and extra coin, and account for jackpot and other payouts.

Gaming machine count means the total amount of coins, tokens, and cash removed from a gaming machine. The amount counted is entered on the Gaming Machine Count Sheet and is considered the drop. Also, the procedure of counting the coins, tokens, and cash or the process of verifying gaming machine coin and token inventory.

Gaming machine fill means the coins or tokens placed in a hopper.

Gaming machine pay table means the reel strip combinations illustrated on the face of the gaming machine that can identify payouts of designated coin amounts.

Gaming operation accounts receivable (for gaming operation credit) means credit extended to gaming operation patrons in the form of markers, returned checks, or other credit instruments that have not been repaid.

Gross gaming revenue means annual total amount of cash wagered on class II and class III games and admission fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded.

Hold means the relationship of win to coin-in for gaming machines and win to drop for table games.

Hub means the person or entity that is licensed to provide the operator of a pari-mutuel wagering operation information related to horse racing which is used to determine winners of races or payoffs on wagers accepted by the pari-mutuel wagering operation.

Internal audit means individuals who perform an audit function of a gaming operation that are independent of the department subject to audit. Independence is obtained through the organizational reporting relationship as the internal audit department shall not report to management of the gaming operation. Internal audit activities should be conducted in a manner that permits objective evaluation of areas examined. Internal audit personnel may provide audit coverage to more than one operation within a Tribe's gaming operation holdings.

Issue slip means a copy of a credit instrument that is retained for numerical sequence control purposes.

Jackpot payout means the portion of a jackpot paid by gaming machine personnel. The amount is usually determined as the difference between the total posted jackpot amount and the coins paid out by the machine. May also be the total amount of the jackpot.

Lammer button means a type of chip that is placed on a gaming table to indicate that the amount of chips designated thereon has been given to the customer for wagering on credit before completion of the credit instrument. Lammer button may also mean a type of

chip used to evidence transfers between table banks and card room banks.

Linked electronic game means any game linked to two (2) or more facilities that are physically separate.

Main card room bank means a fund of cash, coin, and chips used primarily for poker and pan card game areas. Used to make even cash transfers between various games as needed. May be used similarly in other areas of the gaming operation.

Marker means a document, usually signed by the customer, evidencing an extension of credit to him by the gaming operation.

Marker credit play means that players are allowed to purchase chips using credit in the form of a marker.

Marker inventory form means a form maintained at table games or in the gaming operation pit that are used to track marker inventories at the individual table or pit.

Marker transfer form means a form used to document transfers of markers from the pit to the cage.

Master credit record means a form to record the date, time, shift, game, table, amount of credit given, and the signatures or initials of the individuals extending the credit.

Master game program number means the game program number listed on a gaming machine EPROM.

Master game sheet means a form used to record, by shift and day, each table game's winnings and losses. This form reflects the opening and closing table inventories, the fills and credits, and the drop and win.

Mechanical coin counter means a device used to count coins that may be used in addition to or in lieu of a coin weigh scale.

Meter means an electronic (soft) or mechanical (hard) apparatus in a gaming machine. May record the number of coins wagered, the number of coins dropped, the number of times the handle was pulled, or the number of coins paid out to winning players.

MICS means minimum internal control standards in this part 542.

Motion activated dedicated camera means a video camera that, upon its detection of activity or motion in a specific area, begins to record the activity or area.

Multi-game machine means a gaming machine that includes more than one type of game option.

Multi-race ticket means a keno ticket that is played in multiple games.

On-line gaming machine monitoring system means a system used by a gaming operation to monitor gaming machine meter reading activity on an online basis.

Order for credit means a form that is used to request the transfer of chips or markers from a table to the cage. The order precedes the actual transfer transaction that is documented on a credit slip.

Outstation means areas other than the main keno area where bets may be placed and tickets paid.

Par percentage means the percentage of each dollar wagered that the house wins (i.e., gaming operation advantage).

Par sheet means a specification sheet for a gaming machine that provides machine hold percentage, model number, hit frequency, reel combination, number of reels, number of coins that can be accepted and reel strip listing.

Pari-mutuel wagering means a system of wagering on horse races, jai-alai, greyhound and harness racing, where the winners divide the total amount wagered, net of commissions and operating expenses, proportionate to the individual amount wagered.

Payment slip means that part of a marker form on which customer payments are recorded.

Payout means a transaction associated with a winning event.

PIN means the personal identification number used to access a player's account.

Pit podium means a stand located in the middle of the tables used by gaming operation supervisory personnel as a workspace and a record storage area.

Pit supervisor means the employee who supervises all games in a pit.

Player tracking system means a system typically used in gaming machine departments that can record the gaming machine play of individual patrons.

Post time means the time when a pari-mutuel track stops accepting bets in accordance with rules and regulations of the applicable jurisdiction.

Primary and secondary jackpots means promotional pools offered at certain card games that can be won in addition to the primary pot.

Progressive gaming machine means a gaming machine, with a payoff indicator, in which the payoff increases as it is played (i.e., deferred payout). The payoff amount is accumulated, displayed on a machine and will remain until a player lines up the jackpot symbols that result in the progressive amount being paid.

Progressive jackpot means deferred payout from a progressive gaming machine.

Progressive table game means table games that offer progressive jackpots.

Promotional payout means merchandise or awards given to players by the gaming operation based on a winning event.

Promotional progressive pots and/or pools means funds contributed to a table game by and for the benefit of players. Funds are distributed to players based on a predetermined event.

Rabbit ears means a device, generally V-shaped, that holds the numbered balls selected during a keno or bingo game so that the numbers are visible to players and employees.

Rake means a commission charged by the house for maintaining or dealing a game such as poker.

Rake circle means the area of a table where rake is placed.

Random number generator means a device that generates numbers in the absence of a pattern. May be used to determine numbers selected in various games such as keno and bingo. Also commonly used in gaming machines to generate game outcome.

Reel symbols means symbols listed on reel strips of gaming machines.

Rim credit means extensions of credit that are not evidenced by the immediate preparation of a marker and does not include call bets.

Runner means a gaming employee who transports chips/cash to and from a gaming table to a cashier.

SAM means a screen-automated machine used to accept pari-mutuel wagers. SAM's also pay winning tickets in the form of a voucher, which is redeemable for cash.

Shift means an eight-hour period, unless otherwise approved by the Tribal gaming regulatory authority, not to exceed twenty-four (24) hours.

Shill means an employee financed by the house and acting as a player for the purpose of starting or maintaining a sufficient number of players in a game.

Short pay means a payoff from a coin-operated gaming device that is less than the listed amount.

Soft count means the count of the contents in a drop box or a bill acceptor canister.

Sufficient clarity means use of monitoring and recording at a minimum of twenty (20) frames per second. Multiplexer tape recordings are insufficient to satisfy the requirement of sufficient clarity.

Surveillance room means a secure location(s) in a gaming operation used primarily for casino surveillance.

Surveillance system means a system of video cameras, monitors, recorders, video printers, switches, selectors, and other ancillary equipment used for casino surveillance.

Table games means games that are banked by the house or a pool whereby the house or the pool pays all winning bets and collects from all losing bets.

Table inventory means the total coins, chips, and markers at a table.

Table inventory form means the form used by gaming operation supervisory personnel to document the inventory of chips, coins, and tokens on a table at the beginning and ending of a shift.

Table tray means container located on gaming tables where chips, coins, or cash are stored that are used in the game.

Take means the same as earned and unearned take.

Theoretical hold means the intended hold percentage or win of an individual gaming machine as computed by reference to its payout schedule and reel strip settings or EPROM.

Theoretical hold worksheet means a worksheet provided by the manufacturer for all gaming machines which indicate the theoretical percentages that the gaming machine should hold based on adequate levels of coin-in. The worksheet also indicates the reel strip settings, number of credits that may be played, the payout schedule, the number of reels and other information descriptive of the particular type of gaming machine.

Tier A means gaming operations with annual gross gaming revenues of more than $1 million but not more than $5 million.

Tier B means gaming operations with annual gross gaming revenues of more than $5 million but not more than $15 million.

Tier C means gaming operations with annual gross gaming revenues of more than $15 million.

Tokens means a coin-like cash substitute, in various denominations, used for gambling transactions.

Vault means a secure area within the gaming operation where tokens, checks, cash, coins, and chips are stored.

Weigh/count means the value of coins and tokens counted by a weigh machine.

Weigh scale interface means a communication device between the weigh scale used to calculate the amount of funds included in drop buckets and the computer system used to record the weigh data.

Weigh tape means the tape where weighed coin is recorded.

Wide area progressive gaming machine means progressive gaming machines that are linked to machines in other operations and all the machines affect the progressive amount. As wagers are placed, the progressive meter on all of the linked machines increase.

Win means the net win resulting from all gaming activities. Net win results from deducting all gaming losses from all wins prior to considering associated operating expenses.

Win-to-write hold percentage means win divided by write to determine hold percentage.

Wrap means the method of storing coins after the count process has been completed, including, but not limited to, wrapping, racking, or bagging. May also refer to the total amount or value of the counted and stored coins.

Write means the total amount wagered in keno, bingo, pull tabs, and pari-mutuel operations.

Writer means an employee who writes keno, bingo, pull tabs, or pari-mutuel tickets. A keno writer usually also makes payouts.

§ 542.3 How do I comply with this part?

(a) *Compliance based upon tier.*

(1) Tier A gaming operations must comply with §§ 542.1 through 542.18.

(2) Tier B gaming operations must comply with §§ 542.1 through 542.18.

(3) Tier C gaming operations must comply with §§ 542.1 through 542.18.

(b) *Determination of tier.* The determination of tier level shall be made based upon the annual gross gaming revenues indicated within the gaming operation's audited financial statements. Gaming operations moving from one tier to another shall have nine (9) months from the date of the independent certified public accountant's audit report to achieve compliance with the requirements of the new tier.

(1) The Tribe or Tribal gaming regulatory authority may extend the deadline by an additional six (6) months if:

(i) The Tribe or Tribal gaming regulatory authority submits a written request to the Commission to extend the deadline no later than two weeks before the expiration of the initial nine (9) month period;

(ii) The request includes an explanation of why the gaming operation cannot come into compliance with a specific section(s) of the MICS within the initial nine (9) month period; and

(iii) The Tribe or Tribal gaming regulatory authority has not received written notification from the Commission denying the request within two weeks following submission of the request.

(2) [Reserved]

(c) Tribal internal control standards. Within six (6) months of [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], each Tribe or Tribal gaming regulatory authority shall establish by regulation and implement tribal internal control standards that shall:

(1) Be at least as stringent as those set forth in this part;

(2) Contain standards for currency transaction reporting that comply with 31 CFR part 103;

(3) Establish standards for games that are not addressed in this part; and

(4) Establish a deadline, which shall not exceed six (6) months from [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], by which a gaming operation must come into compliance with the tribal minimum internal control standards. However, the Tribe or Tribal gaming regulatory authority may extend the deadline by an additional six (6) months if:

(i) The Tribe or Tribal gaming regulatory authority submits a written request to the Commission to extend the deadline no later than two weeks before the expiration of the initial six (6) month period;

(ii) The request includes an explanation of why the gaming operation cannot come into compliance with a specific section(s) of the MICS within the initial six (6) month period; and

(iii) The Tribe or Tribal gaming regulatory authority has not received written notification from the Commission denying the request within two weeks following submission of the request.

(5) *Existing gaming operations.* All gaming operations that are operating on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], shall comply with this part within the time requirements established in this paragraph. In the interim, such operations shall continue to comply with existing tribal internal control standards.

(6) *New gaming operations.* All gaming operations that commence operations after [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], shall comply with this part before commencement of operations.

(d) *Submission to Commission.* Tribal regulations promulgated pursuant to this part shall not be required to be submitted to the Commission pursuant to 25 CFR 522.3(b).

(e) *Gaming operations.* Each gaming operation shall develop and implement an internal control system that, at a minimum, complies with the tribal minimum internal control standards.

(f) *CPA testing.* (1) An independent certified public accountant (CPA) shall be engaged to perform procedures to verify, on a test basis, that the gaming operation is in material compliance with the tribal minimum internal

control standards or a tribally approved variance that has received Commission concurrence. The procedures may be performed in conjunction with the annual audit. The CPA shall report its findings to the Tribe, Tribal gaming regulatory authority, and management. The Tribe shall submit a copy of the report to the Commission within 120 days of the gaming operation's fiscal year end.

(2) *CPA Guidelines.* In connection with the CPA testing pursuant to paragraph (f)(1) of this section, the Commission shall develop recommended CPA Guidelines available upon request.

§ 542.4 How do these regulations affect minimum internal control standards established in a Tribal-State compact?

(a) If there is a direct conflict between an internal control standard established in a Tribal-State compact and a standard or requirement set forth in this part, then the internal control standard established in a Tribal-State compact shall prevail.

(b) If a standard in a Tribal-State compact is as or more stringent than a standard set forth in this part, then the Tribal-State compact standard shall prevail.

(c) If an internal control standard or a requirement set forth in this part is more stringent than an internal control standard established in a Tribal-State compact, then the internal control standard or requirement set forth in this part shall prevail.

§ 542.5 How do these regulations affect state jurisdiction?

(a) Nothing in this part shall be construed to grant to a state jurisdiction in class II gaming or extend a state's jurisdiction in class III gaming.

§ 542.6 Does this part apply to small and charitable gaming operations?

(a) *Small gaming operations.* This part shall not apply to small gaming operations provided that:

(1) The Tribal gaming regulatory authority permits the operation to be exempt from this part;

(2) The annual gross gaming revenue of the operation does not exceed $1 million; and

(3) The Tribal gaming regulatory authority develops and the operation complies with alternate procedures that:

(i) Protect the integrity of games offered; and

(ii) Safeguard the assets used in connection with the operation.

(b) *Charitable gaming operations.* This part shall not apply to charitable gaming operations provided that:

(1) All proceeds are for the benefit of a charitable organization;

(2) The Tribal gaming regulatory authority permits the charitable organization to be exempt from this part;

(3) The charitable gaming operation is operated wholly by the charitable organization's employees or volunteers;

(4) The annual gross gaming revenue of the charitable gaming operation does not exceed $100,000;

(i) Where the annual gross gaming revenues of the charitable gaming operation exceed $100,000, but are less than $1 million, paragraph (a) of this section shall also apply; and

(ii) [Reserved]

(5) The Tribal gaming regulatory authority develops and the charitable gaming operation complies with alternate procedures that:

(i) Protect the integrity of the games offered; and

(ii) Safeguard the assets used in connection with the gaming operation.

(c) *Independent operators.* Nothing in this section shall exempt gaming operations conducted by independent operators for the benefit of a charitable organization.

Subpart B—Gaming Operations

§ 542.7 What are the minimum internal control standards for bingo?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Game play standards.* The functions of seller and payout verifier shall be segregated. Employees who sell cards on the floor shall not verify payouts with cards in their possession. Floor clerks who sell cards on the floor are permitted to announce the serial numbers of winning cards.

(2) All sales of bingo cards shall be documented by recording at least the following:

(i) Date;

(ii) Shift (if applicable);

(iii) Session (if applicable);

(iv) Dollar amount;

(v) Signature, initials, or identification number of at least one seller (if manually documented); and

(vi) Signature, initials, or identification number of person independent of seller who has randomly verified the card sales (this requirement is not applicable to locations with $1 million or less in annual write).

(3) The total win and write shall be computed and recorded by shift (or session, if applicable).

(4) The Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall develop and the gaming operation shall comply with procedures that ensure the correct calling of numbers selected in the bingo game.

(5) Each ball shall be shown to a camera immediately before it is called so that it is individually displayed to all patrons. For speed bingo games not verified by camera equipment, each ball drawn shall be verified by an independent person.

(6) For all coverall games and other games offering a payout of $1,200 or more, as the balls are called the numbers shall be immediately recorded by the caller and maintained for a minimum of 24 hours.

(7) Controls shall be present to assure that the numbered balls are placed back into the selection device prior to calling the next game.

(8) The authenticity of each payout shall be verified by at least two persons. A computerized card verifying system may function as the second person verifying the payout if the card with the winning numbers is displayed on a reader board.

(9) Payouts in excess of $1,200 shall require written approval, by personnel independent of the transaction, that the bingo card has been examined and verified with the bingo card record to ensure that the ticket has not been altered.

(10) Total payout shall be computed and recorded by shift or session, if applicable.

(c) *Promotional payouts or awards.* (1) If the gaming operation offers promotional payouts or awards, the payout form/documentation shall include the following information:

(i) Date and time;

(ii) Dollar amount of payout or description of personal property (e.g., jacket, toaster, car, etc.), including fair market value;

(iii) Type of promotion; and

(iv) Signature of at least one employee authorizing and completing the transaction.

(2) [Reserved]

(d) *Accountability form.* (1) All funds used to operate the bingo department shall be recorded on an accountability form.

(2) All funds used to operate the bingo department shall be counted independently by at least two persons and reconciled to the recorded amounts at the end of each shift or session.

(e) *Bingo equipment.* (1) Access to controlled bingo equipment (e.g., blower, balls in play, and back-up balls) shall be restricted to authorized persons.

(2) Procedures shall be established to inspect new bingo balls put into play as well as for those in use.

(3) Bingo equipment shall be maintained and checked for accuracy on a periodic basis.

(4) The bingo card inventory shall be controlled so as to assure the integrity of the cards being used as follows:

(i) Purchased paper shall be inventoried and secured by an individual independent from the bingo sales;

(ii) The issue of paper to the cashiers shall be documented and signed for by the inventory control department and cashier. The document log shall include the series number of the bingo paper;

(iii) A copy of the bingo paper control log shall be given to the bingo ball caller for purposes of determining if the winner purchased the paper that was issued to the gaming operation that day (electronic verification satisfies this standard);

(iv) At the end of each month, an independent person shall verify the accuracy of the ending balance in the bingo paper control by counting the paper on-hand;

(v) Monthly the amount of paper sold from the bingo paper control log shall be compared to the amount of revenue for reasonableness.

(f) *Standards for statistical reports.* (1) Records shall be maintained, which include win, write (card sales), and a win-to-write hold percentage, for:

(i) Each shift or each session;

(ii) Each day;

(iii) Month-to-date; and

(iv) Year-to-date or fiscal year-to-date.

(2) Non-bingo management shall review bingo statistical information at least on a monthly basis and investigate any large or unusual statistical fluctuations.

(3) Investigations shall be documented and maintained for Commission inspection.

(g) *Electronic equipment.* (1) If the gaming operation utilizes electronic equipment in connection with the play of bingo, then the following standards shall also apply.

(i) If the electronic equipment contains a bill acceptor, then § 542.21(d) and (e), § 542.31(d) and (e), or § 542.41(d) and (e)(as applicable) shall apply.

(ii) If the electronic equipment uses a bar code or microchip reader, the reader shall be tested periodically by an entity independent of bingo personnel to determine that it is correctly reading the bar code or the microchip.

(iii) If the electronic equipment returns a voucher or a payment slip to the player, then § 542.13(n) (as applicable) shall apply.

(2) [Reserved]

(h) *Standards for linked electronic games.* Management shall ensure that all agreements/contracts entered into after [the effective date of the final rule] to provide linked electronic games shall contain a provision requiring the vendor to comply with the standards in this section.

(i) *Host requirements/game information (for linked electronic games).* (1) Providers of any linked electronic game(s) shall maintain complete records of game data for a period of one (1) year from the date the games are played (or a time frame established by the Tribal gaming regulatory authority). This data may be kept in an archived manner, provided the information can be produced within 24 hours upon request. In any event, game data for the preceding 72 hours shall be immediately accessible.

(2) Data required to be maintained for each game played includes:

(i) Date and time game start and game end;

(ii) Sales information by location;

(iii) Cash distribution by location;

(iv) Refund totals by location;

(v) Cards-in-play count by location;

(vi) Identification number of winning card(s);

(vii) Ordered list of bingo balls drawn; and

(viii) Prize amounts at start and end of game.

(j) *Host requirements/sales information (for linked electronic games).* (1) Providers of any linked electronic game(s) shall maintain complete records of sales data for a period of one (1) year from the date the games are played (or a time frame established by the Tribal gaming regulatory authority). This data may be kept in an archived manner, provided the information can be produced within 24 hours upon request. In any event, sales data for the preceding 10 days shall be immediately accessible. Summary information must be accessible for at least 120 days.

(2) Sales information required shall include:

(i) Daily sales totals by location;

(ii) Commissions distribution summary by location;

(iii) Game-by-game sales, prizes, refunds, by location; and

(iv) Daily network summary, by game by location.

(k) *Remote host requirements (for linked electronic games).* (1) Linked electronic game providers shall maintain online records at the remote host site for any game played. These records shall remain online until the conclusion of the session of which the game is a part. Following the conclusion of the session, records may be archived, but in any event, must be retrievable in a timely manner for at least 72 hours following the close of the session. Records shall be accessible through some archived media for at least 90 days from the date of the game.

(2) Game information required includes date and time of game start and game end, sales totals, cash distribution (prizes) totals, and refund totals.

(3) Sales information required includes cash register reconciliations, detail and summary records for purchases, prizes, refunds, credits, and game/sales balance for each session.

(l) *Standards for player accounts (for proxy play and linked electronic games).* (1) Prior to participating in any game, players shall be issued a unique player account number. The player account number can be issued through the following means:

(i) Through the use of a point-of-sale (cash register device);

(ii) By assignment through an individual play station; or

(iii) Through the incorporation of a "player tracking" media.

(2) Printed receipts issued in conjunction with any player account should include a time/date stamp.

(3) All player transactions shall be maintained, chronologically by account number, through electronic means on a data storage device. These transaction records shall be maintained online throughout the active game and for at least 24 hours before they can be stored on an "off-line" data storage media.

(4) The game software shall provide the ability to, upon request, produce a printed account history, including all transactions, and a printed game summary (total purchases, deposits, wins, debits, for any account that has been active in the game during the preceding 24 hours).

(5) The game software shall provide a "player account summary" at the end of every game. This summary shall list all accounts for which there were any transactions during that game day and include total purchases, total deposits, total credits (wins), total debits (cash-outs) and an ending balance.

§ 542.8 What are the minimum internal control standards for pull tabs?

(a) *Computer applications.* For any computer application utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this

section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Pull tab inventory.* (1) Pull tab inventory (including unused tickets) shall be controlled, to assure the integrity of the pull tabs.

(2) Purchased pull tabs shall be inventoried and secured by an individual independent from the pull tab sales.

(3) The issue of pull tabs to the cashier or sales location shall be documented and signed for by the inventory control department and the cashier witnessing the fill. The document log shall include the serial number of the pull tabs.

(4) Appropriate documentation shall be given to the redemption booth for purposes of determining if the winner purchased the pull tab that was issued by the gaming operation. Electronic verification satisfies this requirement.

(5) At the end of each month, an independent person shall verify the accuracy of the ending balance in the pull tab control by counting the pull tabs on hand.

(6) A monthly comparison for reasonableness shall be made of the amount of pull tabs sold from the pull tab control log to the amount of revenue recognized.

(c) *Access.* Access to pull tabs shall be restricted to authorized persons.

(d) *Transfers.* Transfers of pull tabs from storage to the sale location shall be secured and independently controlled.

(e) *Winning pull tabs.* (1) Winning pull tabs shall be verified and paid as follows:

(i) Payouts in excess of a dollar amount determined by the Tribal gaming regulatory authority shall be verified by at least two employees.

(ii) Total payout shall be computed and recorded by shift.

(iii) The winning pull tabs shall be voided so that they cannot be presented for payment again.

(2) Personnel independent of pull tab management shall verify the amount of winning pull tabs redeemed each day.

(f) *Accountability form.* (1) All funds used to operate the pull tab game shall be recorded on an accountability form.

(2) All funds used to operate the pull tab game shall be counted independently by at least two persons and reconciled to the recorded amounts at the end of each shift or session.

(g) *Standards for statistical reports.* (1) Records shall be maintained, which include win, write (sales), and a win-to-write hold percentage as compared to the theoretical hold percentage derived from the flare, for:

(i) Each deal or type of game;

(ii) Each shift;

(iii) Each day;

(iv) Month-to-date; and

(v) Year-to-date or fiscal year-to-date as applicable.

(2) Non-pull tab management independent of pull tab personnel shall review statistical information at least on a monthly basis and shall investigate any large or unusual statistical fluctuations. These investigations shall be documented and maintained for inspection.

(3) Each month, the actual hold percentage shall be compared to the theoretical hold percentage. Any significant variations (±3%) shall be investigated.

(h) *Electronic equipment.* (1) If the gaming operation utilizes electronic equipment in connection with the play of pull tabs, then the following standards shall also apply.

(i) If the electronic equipment contains a bill acceptor, then § 542.21(d) and (e), § 542.31(d) and (e), or § 542.41(d) and (e)(as applicable) shall apply.

(ii) If the electronic equipment uses a bar code or microchip reader, the reader shall be tested periodically to determine that it is correctly reading the bar code or microchip.

(iii) If the electronic equipment returns a voucher or a payment slip to the player, then § 542.13(n)(as applicable) shall apply.

(2) [Reserved]

§ 542.9 What are the minimum internal control standards for card games?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Standards for drop and count.* The procedures for the collection of card games drop boxes and the count of the contents thereof shall comply with this part as it is applicable to table game drop and table game soft count.

(c) *Standards for supervision.* (1) Supervision shall be provided at all times the card room is in operation by personnel with authority equal to or greater than those being supervised.

(2) Exchanges between table banks and the main card room bank (or cage, if a main card room bank is not used) in excess of $100.00 shall be authorized by a supervisor. All exchanges shall be evidenced by the use of a lammer unless the exchange of chips, tokens, and/or cash takes place at the table.

(3) Exchanges from the main card room bank (or cage, if a main card room bank is not used) to the table banks shall be verified by the card room dealer and the runner.

(4) If applicable, transfers between the main card room bank and the cage shall be properly authorized and documented.

(5) A rake collected or ante placed shall be done in accordance with the posted rules.

(d) *Standards for playing cards.* (1) Playing cards shall be maintained in a secure location to prevent unauthorized access and to reduce the possibility of tampering.

(2) Used cards shall be maintained in a secure location until marked, scored, or destroyed, in a manner subject to the approval of the Tribal gaming regulatory authority, to prevent unauthorized access and reduce the possibility of tampering.

(3) The Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall establish a reasonable time period, which shall not exceed seven (7) days of use, within which to mark and remove cards from play.

(i) This standard shall not apply where playing cards are retained for an investigation.

(ii) [Reserved]

(4) A card control log shall be maintained that documents when cards are received on site, distributed to and returned from tables and removed from the gaming operation.

(e) *Plastic cards.* Notwithstanding paragraph (d) of this section, if a gaming operation uses plastic cards (not plastic-coated cards), the cards may be used for up to three (3) months if the plastic cards are washed or cleaned after at least every 72 hours of use.

(f) *Standards for shills.* (1) Issuance of shill funds shall have the written approval of the supervisor.

(2) Shill returns shall be recorded and verified on the shill sign-out form.

(3) The replenishment of shill funds shall be documented.

(g) *Standards for reconciliation of card room bank.* (1) The amount of the main card room bank shall be counted, recorded, and reconciled on at least a per shift basis.

(2) At least once per shift, the table banks that were opened during that shift shall be counted, recorded, and reconciled by a dealer (or other individual if the table is closed) and a supervisor, and shall be attested to by their signatures on the check-out form.

(h) *Standards for promotional progressive pots and pools.* (1) All funds contributed by players into the pools shall be returned when won in

accordance with the posted rules with no commission or administrative fee withheld.

(2) Rules governing promotional pools shall be conspicuously posted and designate:

(i) The amount of funds to be contributed from each pot;

(ii) What type of hand it takes to win the pool (e.g., what constitutes a "bad beat");

(iii) How the promotional funds will be paid out;

(iv) How/when the contributed funds are added to the jackpots; and

(v) Amount/percentage of funds allocated to primary and secondary jackpots, if applicable.

(3) Promotional pool contributions shall not be placed in or near the rake circle, in the drop box, or commingled with gaming revenue from card games or any other gambling game.

(4) The amount of the jackpot shall be conspicuously displayed in the card room.

(5) At least once a day, the posted pool amount shall be updated to reflect the current pool amount.

(6) At least once a day, increases to the posted pool amount shall be reconciled to the cash previously counted or received by the cage by personnel independent of the card room.

(7) All decreases to the pool must be properly documented, including a reason for the decrease.

(i) *Promotional progressive pots and pools where funds are displayed in the card room.* Promotional funds displayed in the card room shall be placed in a locked container in plain view of the public.

(2) Persons authorized to transport the locked container shall be precluded from having access to the contents keys.

(3) The contents key shall be maintained by personnel independent of the card room.

(4) At least once a day, the locked container shall be removed by two individuals, one of whom is independent of the card games department, and transported directly to the cage or other secure room to be counted, recorded, and verified.

(5) The locked container shall then be returned to the card room where the posted pool amount shall be updated to reflect the current pool amount.

(j) *Promotional progressive pots and pools where funds are maintained in the cage.* (1) Promotional funds removed from the card game shall be placed in a locked container.

(2) Persons authorized to transport the locked container shall be precluded from having access to the contents keys.

(3) The contents key shall be maintained by personnel independent of the card room.

(4) At least once a day, the locked container shall be removed by two individuals, one of whom is independent of the card games department, and transported directly to the cage or other secure room to be counted, recorded, and verified, prior to accepting the funds into cage accountability.

(5) The posted pool amount shall then be updated to reflect the current pool amount.

§ 542.10 What are the minimum internal control standards for keno?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Game play standards.* (1) The computerized customer ticket shall include the date, game number, ticket sequence number, station number, and conditioning (including multi-race if applicable).

(2) Concurrently with the generation of the ticket the information on the ticket shall be recorded on a restricted transaction log or computer storage media.

(3) Keno personnel shall be precluded from access to the restricted transaction log or computer storage media.

(4) When it is necessary to void a ticket, the void information shall be inputted in the computer and the computer shall document the appropriate information pertaining to the voided wager (e.g., void slip is issued or equivalent documentation is generated).

(5) Controls shall exist to prevent the writing and voiding of tickets after a game has been closed and after the number selection process for that game has begun.

(6) The controls in effect for tickets prepared in outstations (if applicable) shall be identical to those in effect for the primary keno game.

(c) *Rabbit ear or wheel system.* (1) The following standards shall apply if a rabbit ear or wheel system is utilized:

(i) A dedicated camera shall be utilized to monitor the following both prior to, and subsequent to, the calling of a game:

(A) Empty rabbit ears or wheel;

(B) Date and time;

(C) Game number; and

(D) Full rabbit ears or wheel.

(ii) The film of the rabbit ears or wheel shall provide a legible identification of the numbers on the balls drawn.

(iii) Keno personnel shall immediately input the selected numbers in the computer and the computer shall document the date, the game number, the time the game was closed, and the numbers drawn.

(iv) The Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that prevent unauthorized access to keno balls in play.

(v) Back-up keno ball inventories shall be secured in a manner to prevent unauthorized access.

(vi) The Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures for inspecting new keno balls put into play as well as for those in use.

(2) [Reserved]

(d) *Random number generator.* (1) The following standards shall apply if a random number generator is utilized:

(i) The random number generator shall be linked to the computer system and shall directly relay the numbers selected into the computer without manual input.

(ii) Keno personnel shall be precluded from access to the random number generator.

(2) [Reserved]

(e) *Winning tickets.* Winning tickets shall be verified and paid as follows:

(1) The sequence number of tickets presented for payment shall be inputted into the computer, and the payment amount generated by the computer shall be given to the patron.

(2) The Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures to preclude payment on tickets previously presented for payment, unclaimed winning tickets (sleepers) after a specified period of time, voided tickets, and tickets which have not been issued yet.

(3) All payouts shall be supported by the customer (computer-generated) copy of the winning ticket (payout amount is indicated on the customer ticket or a payment slip is issued).

(4) A manual report or other documentation shall be produced and maintained documenting any payments made on tickets which are not authorized by the computer.

(5) Winning tickets over a specified dollar amount (not to exceed $10,000 for locations with more than $5 million annual keno write and $3,000 for all other locations) shall also require the following:

(i) Approval of management personnel independent of the keno department, evidenced by their signature;

(ii) Review of the video recording and/or digital record of the rabbit ears or wheel to verify the legitimacy of the draw and the accuracy of the draw ticket (for rabbit ear or wheel systems only);

(iii) Comparison of the winning customer copy to the computer reports;

(iv) Regrading of the customer copy using the payout schedule and draw information; and

(v) Documentation and maintenance of the procedures in this paragraph.

(6) When the keno game is operated by one person, all winning tickets in excess of an amount to be determined by management (not to exceed $1,500) shall be reviewed and authorized by someone independent of the keno department.

(f) *Check out standards at the end of each keno shift.* (1) For each writer station, a cash summary report (count sheet) shall be prepared that includes:

(i) Computation of net cash proceeds for the shift and the cash turned in; and

(ii) Signatures of two employees who have verified the net cash proceeds for the shift and the cash turned in.

(2) [Reserved]

(g) *Promotional payouts or awards.* (1) If a gaming operation offers promotional payouts or awards, the payout form/documentation shall include the following information:

(i) Date and time;

(ii) Dollar amount of payout or description of personal property (e.g., jacket, toaster, car, etc.), including fair market value;

(iii) Type of promotion; and

(iv) Signature of at least one employee authorizing and completing the transaction.

(2) [Reserved]

(h) *Standards for statistical reports.* (1) Records shall be maintained which include win and write by individual writer for each day.

(2) Records shall be maintained which include win, write, and win-to-write hold percentage for:

(i) Each shift;

(ii) Each day;

(iii) Month-to-date; and

(iv) Year-to-date or fiscal year-to-date as applicable.

(3) Non-keno management independent from the keno personnel shall review keno statistical data at least on a monthly basis and investigate any large or unusual statistical variances.

(4) At a minimum, investigations shall be performed for statistical percentage fluctuations from the base level for a month in excess of +/-3%. The base level shall be defined as the gaming operation's win percentage for the previous business year or the previous 12 months.

(5) Such investigations shall be documented and maintained.

(i) *System security standards.* (1) All keys (including duplicates) to sensitive computer hardware in the keno area shall be maintained by a department independent of the keno function.

(2) Personnel independent of the keno department shall be required to accompany such keys to the keno area and shall observe changes or repairs each time the sensitive areas are accessed.

(j) *Documentation standards.* (1) Adequate documentation of all pertinent keno information shall be generated by the computer system.

(2) This documentation shall be restricted to authorized personnel.

(3) The documentation shall include, at a minimum:

(i) Ticket information (as described in paragraph (b)(1) of this section);

(ii) Payout information (date, time, ticket number, amount, etc.);

(iii) Game information (number, ball draw, time, etc.);

(iv) Daily recap information, including:

(A) Write;

(B) Payouts; and

(C) Gross revenue (win);

(v) System exception information, including:

(A) Voids;

(B) Late pays; and

(C) Appropriate system parameter information (e.g., changes in pay tables, ball draws, payouts over a predetermined amount, etc.); and

(vi) Personnel access listing, including:

(A) Employee name;

(B) Employee identification number; and

(C) Listing of functions employee can perform or equivalent means of identifying same.

(k) *Keno audit standards.* (1) The keno audit function shall be independent of the keno department.

(2) At least annually, keno audit shall foot the write on the restricted copy of the keno transaction report for a minimum of one shift and compare the total to the total as documented by the computer.

(3) For at least one shift every other month, keno audit shall perform the following:

(i) Foot the customer copy of the payouts and trace the total to the payout report; and

(ii) Regrade at least 1% of the winning tickets using the payout schedule and draw ticket.

(4) Keno audit shall perform the following:

(i) For a minimum of five games per week, compare the video recording and/or digital record of the rabbit ears or wheel to the computer transaction summary;

(ii) Compare net cash proceeds to the audited win/loss by shift and investigate any large cash overages or shortages (i.e., in excess of $25.00);

(iii) Review and regrade all winning tickets greater than or equal to $1,500, including all forms which document that proper authorizations and verifications were obtained and performed;

(iv) Review the documentation for payout adjustments made outside the computer and investigate large and frequent payments;

(v) Review personnel access listing for inappropriate functions an employee can perform;

(vi) Review system exception information on a daily basis for propriety of transactions and unusual occurrences including changes to the personnel access listing;

(vii) If a random number generator is used, then at least weekly review the numerical frequency distribution for potential patterns; and

(viii) Investigate and document results of all noted improper transactions or unusual occurrences.

(5) When the keno game is operated by one person:

(i) The customer copies of all winning tickets in excess of $100 and at least 5% of all other winning tickets shall be regraded and traced to the computer payout report;

(ii) The video recording and/or digital record of rabbit ears or wheel shall be randomly compared to the computer game information report for at least 10% of the games during the shift; and

(iii) Keno audit personnel shall review winning tickets for proper authorization pursuant to paragraph (e)(6) of this section.

(6) In the event any person performs the writer and deskman functions on the same shift, the procedures described in paragraphs (k)(5)(i) and (ii) of this section (using the sample sizes indicated) shall be performed on tickets written by that person.

(7) Documentation (e.g., a log, checklist, etc.) which evidences the

performance of all keno audit procedures shall be maintained.

(8) Non-keno management shall review keno audit exceptions, and perform and document investigations into unresolved exceptions.

(9) When a multi-game ticket is part of the sample in paragraphs (k)(3)(ii), (k)(5)(i) and (k)(6) of this section, the procedures may be performed for 10 games or 10% of the games won, whichever is greater.

(l) *Access.* Access to the computer system shall be adequately restricted (i.e., passwords are changed at least quarterly, access to computer hardware is physically restricted, etc.).

(m) *Equipment standards.*

(1) There shall be effective maintenance planned to service keno equipment, including computer program updates, hardware servicing, and keno ball selection equipment (e.g., service contract with lessor).

(i) Keno equipment maintenance (excluding keno balls) shall be independent of the operation of the keno game.

(ii) Keno maintenance personnel shall report irregularities to management personnel independent of keno.

(iii) If the gaming operation utilizes a barcode or microchip reader in connection with the play of keno, the reader shall be tested at least annually by personnel independent of the keno department to determine that it is correctly reading the barcode or microchip.

(2) [Reserved]

(n) *Document retention.*

(1) All documents, including computer storage media, discussed in this section shall be retained for five (5) years, except for the following, which shall be retained for at least seven (7) days:

(i) Video recordings and/or digital records of rabbit ears or wheel;

(ii) All copies of winning keno tickets of less than $1,500.00.

(2) [Reserved]

(o) *Multi-race tickets.* (1) Procedures shall be established to notify keno personnel immediately of large multi-race winners to ensure compliance with standards in paragraph (e)(5) of this section.

(2) Procedures shall be established to ensure that keno personnel are aware of multi-race tickets still in process at the end of a shift.

(p) *Manual keno.* For gaming facilities that conduct manual keno games, alternate procedures that provide at least the level of control described by the standards in this section shall be developed and implemented.

§ 542.11 What are the minimum internal control standards for pari-mutuel wagering?

(a) *Exemptions.* (1) The requirements of this section shall not apply to gaming operations who house pari-mutuel wagering operations conducted entirely by a state licensed simulcast service provider pursuant to an approved tribal-state compact if:

(i) The simulcast service provider utilizes its own employees for all aspects of the pari-mutuel wagering operation;

(ii) The gaming operation posts, in a location visible to the public, that the simulcast service provider and its employees are wholly responsible for the conduct of pari-mutuel wagering offered at that location;

(iii) The gaming operation receives a predetermined fee from the simulcast service provider; and

(iv) In addition, the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall adopt standards that ensure that the gaming operation receives, from the racetrack, its contractually guaranteed percentage of the handle.

(2) Gaming operations that contract directly with a state regulated racetrack as a simulcast service provider, but whose on-site pari-mutuel operations are conducted wholly or in part by tribal gaming operation employees, shall not be required to comply with paragraphs (h)(5) thru (h)(9) of this section.

(i) If any standard contained within this section conflicts with state law, a tribal-state compact, or a contract, then the gaming operation shall document the basis for noncompliance and shall maintain such documentation for inspection by the Tribal gaming regulatory authority and the Commission.

(ii) In addition, the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall adopt standards that ensure that the gaming operation receives, from the racetrack, its contractually guaranteed percentage of the handle.

(b) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(c) *Betting ticket and equipment standards.* (1) All pari-mutuel wagers shall be transacted through the pari-mutuel satellite system. In case of computer failure between the pari-mutuel book and the hub, no tickets shall be manually written.

(2) Whenever a betting station is opened for wagering or turned over to a new writer/cashier, the writer/cashier shall sign on and the computer shall document gaming operation name, station number, the writer/cashier identifier, and the date and time.

(3) A betting ticket shall consist of at least two parts:

(i) An original, which shall be transacted and issued through a printer and given to the patron; and

(ii) A copy that shall be recorded concurrently with the generation of the original ticket either on paper or other storage media (e.g., tape or diskette).

(4) Upon accepting a wager, the betting ticket that is created shall contain the following:

(i) A unique transaction identifier;

(ii) Gaming operation name and station number;

(iii) Race track, race number, horse identification or event identification, as applicable;

(iv) Type of bet(s), each bet amount, total number of bets, and total take; and

(v) Date and time.

(5) All tickets shall be considered final at post time.

(6) If a gaming operation voids a betting ticket written prior to post time, it shall be immediately entered into the system.

(7) Future wagers shall be accepted and processed in the same manner as regular wagers.

(d) *Payout standards.* (1) Prior to making payment on a ticket the writer/cashier shall input the ticket for verification and payment authorization.

(2) The computer shall be incapable of authorizing payment on a ticket that has been previously paid, a voided ticket, a losing ticket, or an unissued ticket.

(e) *Checkout standards.* (1) Whenever the betting station is closed or the writer/cashier is replaced, the writer/cashier shall sign off and the computer shall document the gaming operation name, station number, the writer/cashier identifier, the date and time, and cash balance.

(2) For each writer/cashier station a summary report shall be completed at the conclusion of each shift including:

(i) Computation of cash turned in for the shift; and

(ii) Signatures of two employees who have verified the cash turned in for the shift.

(f) *Employee wagering.* Pari-mutuel employees shall be prohibited from wagering on race events while on duty, including during break periods.

(g) *Computer reports standards.* (1) Adequate documentation of all

pertinent pari-mutuel information shall be generated by the computer system.

(2) This documentation shall be restricted to authorized personnel.

(3) The documentation shall be created for each day's operation and shall include, but is not limited to:

(i) Unique transaction identifier;

(ii) Date/time of transaction;

(iii) Type of wager;

(iv) Animal identification or event identification;

(v) Amount of wagers (by ticket, writer/SAM, track/event, and total);

(vi) Amount of payouts (by ticket, writer/SAM, track/event, and total);

(vii) Tickets refunded (by ticket, writer, track/event, and total);

(viii) Unpaid winners/vouchers ("outs") (by ticket/voucher, track/event, and total);

(ix) Voucher sales/payments (by ticket, writer/SAM, and track/event);

(x) Voids (by ticket, writer, and total);

(xi) Future wagers (by ticket, date of event, total by day, and total at the time of revenue recognition);

(xii) Results (winners and payout data);

(xiii) Breakage data (by race and track/event);

(xiv) Commission data (by race and track/event); and

(xv) Purged data (by ticket and total).

(4) The system shall generate the following reports:

(i) A reconciliation report that summarizes totals by track/event, including write, the day's winning ticket total, total commission and breakage due the gaming operation, and net funds transferred to or from the gaming operation's bank account;

(ii) An exception report that contains a listing of all system functions and overrides not involved in the actual writing or cashing of tickets, including sign-on/off, voids, and manually input paid tickets; and

(iii) A purged ticket report that contains a listing of the unique transaction identifier, description, ticket cost and value, and date purged.

(h) *Accounting and auditing functions.* A gaming operation shall perform the following accounting and auditing functions:

(1) The pari-mutuel audit shall be conducted by someone independent of the pari-mutuel operation.

(2) Documentation shall be maintained evidencing the performance of all pari-mutuel accounting and auditing procedures.

(3) An accounting employee shall review handle, commission, and breakage for each day's play and recalculate the net amount due to or from the systems operator on a weekly basis.

(4) The accounting employee shall verify actual cash/cash equivalents turned in to the system's summary report for each cashier's drawer (Beginning balance, (+) fills (draws), (+) net write (sold less voids), (-) payouts (net of IRS withholding), (-) cashbacks (paids), (=) cash turn-in).

(5) An accounting employee shall produce a gross revenue recap report to calculate gross revenue for each day's play and for a month-to-date basis, including the following totals:

(i) Commission;

(ii) Positive breakage;

(iii) Negative breakage;

(iv) Track/event fees;

(v) Track/event fee rebates; and

(vi) Purged tickets.

(6) All winning tickets and vouchers shall be physically removed from the SAM's for each day's play.

(7) In the event a SAM does not balance for a day's play, the auditor shall perform the following procedures:

(i) Foot the winning tickets and vouchers deposited and trace to the totals of SAM activity produced by the system;

(ii) Foot the listing of cashed vouchers and trace to the totals produced by the system;

(iii) Review all exceptions for propriety of transactions and unusual occurrences;

(iv) Review all voids for propriety;

(v) Verify the results as produced by the system to the results provided by an independent source;

(vi) Regrade 1% of paid (cashed) tickets to ensure accuracy and propriety; and

(vii) When applicable, reconcile the totals of future tickets written to the totals produced by the system for both earned and unearned take, and review the reports to ascertain that future wagers are properly included on the day of the event.

(8) At least annually the auditor shall foot the wagers for one day and trace to the total produced by the system.

(9) At least one day per quarter, the auditor shall recalculate and verify the change in the unpaid winners to the total purged tickets.

§ 542.12 What are the minimum internal control standards for table games?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Standards for drop and count.* The procedures for the collection of table game drop boxes and the count of the contents thereof shall comply with this part as it is applicable to table game drop and table game soft count.

(c) *Fill and credit standards.* (1) Fill slips and credit slips shall be in at least triplicate form, and in a continuous, prenumbered series. Such slips shall be concurrently numbered in a form utilizing the alphabet and only in one series at a time. The alphabet need not be used if the numerical series is not repeated during the business year.

(2) Unissued and issued fill/credit slips shall be safeguarded and adequate procedures shall be employed in their distribution, use, and control. Personnel from the cashier or pit departments shall have no access to the secured (control) copies of the fill/credit slips.

(3) When a fill/credit slip is voided, the cashier shall clearly mark "void" across the face of the original and first copy, the cashier and one other person independent of the transactions shall sign both the original and first copy, and shall submit them to the accounting department for retention and accountability.

(4) Fill transactions shall be authorized by a pit supervisor before the issuance of fill slips and transfer of chips, tokens, or cash equivalents. The fill request shall be communicated to the cage where the fill slip is prepared.

(5) At least three parts of each fill slip shall be utilized as follows:

(i) One part shall be transported to the pit with the fill and, after the appropriate signatures are obtained, deposited in the table game drop box;

(ii) One part shall be retained in the cage for reconciliation of the cashier bank; and

(iii) For computer systems, one part shall be retained in a secure manner to insure that only authorized persons may gain access to it. For manual systems, one part shall be retained in a secure manner in a continuous unbroken form.

(6) For Tier C gaming operations, the part of the fill slip that is placed in the table game drop box shall be of a different color for fills than for credits, unless the type of transaction is clearly distinguishable in another manner (the checking of a box on the form shall not be a clearly distinguishable indicator).

(7) The table number, shift, and amount of fill by denomination and in total shall be noted on all copies of the fill slip. The correct date and time shall be indicated on at least two copies.

(8) All fills shall be carried from the cashier's cage by an individual who is independent of the cage or pit.

(9) The fill slip shall be signed by at least the following individuals (as an indication that each has counted the

amount of the fill and the amount agrees with the fill slip):

(i) Cashier who prepared the fill slip and issued the chips, tokens, or cash equivalent;

(ii) Runner who carried the chips, tokens, or cash equivalents from the cage to the pit;

(iii) Dealer who received the chips, tokens, or cash equivalents at the gaming table; and

(iv) Pit supervisor who supervised the fill transaction.

(10) Fills shall be broken down and verified by the dealer in public view before the dealer places the fill in the table tray.

(11) A copy of the fill slip shall then be deposited into the drop box on the table by the dealer, where it shall appear in the soft count room with the cash receipts for the shift.

(12) Table credit transactions shall be authorized by a pit supervisor before the issuance of credit slips and transfer of chips, tokens, or other cash equivalent. The credit request shall be communicated to the cage where the credit slip is prepared.

(13) At least three parts of each credit slip shall be utilized as follows:

(i) Two parts of the credit slip shall be transported by the runner to the pit. After the appropriate signatures are obtained, one copy shall be deposited in the table game drop box and one copy shall accompany transport of the chips, tokens, markers, or cash equivalents from the pit to the cage.

(ii) For computer systems, one part shall be retained in a secure manner to insure that only authorized persons may gain access to it. For manual systems, one part shall be retained in a secure manner in a continuous unbroken form.

(14) The table number, shift, and the amount of credit by denomination and in total shall be noted on all copies of the credit slip. The correct date and time shall be indicated on at least two copies.

(15) Chips, tokens, and/or cash equivalents shall be removed from the table tray by the dealer and shall be broken down and verified by the dealer in public view prior to placing them in racks for transfer to the cage.

(16) All chips, tokens, and cash equivalents removed from the tables and markers removed from the pit shall he carried to the cashier's cage by an individual who is independent of the cage or pit.

(17) The credit slip shall be signed by at least the following individuals (as an indication that each has counted or, in the case of markers, reviewed the items transferred):

(i) Cashier who received the items transferred from the pit and prepared the credit slip;

(ii) Runner who carried the items transferred from the pit to the cage and returned to the pit with the credit slip;

(iii) Dealer who had custody of the items prior to transfer to the cage; and

(iv) Pit supervisor who supervised the credit transaction.

(18) The credit slip shall be inserted in the drop box by the dealer.

(19) Chips, tokens, or other cash equivalents shall be deposited on or removed from gaming tables only when accompanied by the appropriate fill/credit or marker transfer forms.

(20) Cross fills (the transfer of chips between table games) and even cash exchanges are prohibited in the pit.

(d) *Table inventory forms.* (1) At the close of each shift, for those table banks that were opened during that shift:

(i) The table's chip, token, coin, and marker inventory shall be counted and recorded on a table inventory form; or

(ii) If the table banks are maintained on an imprest basis, a final fill or credit shall be made to bring the bank back to par.

(2) If final fills are not made, beginning and ending inventories shall be recorded on the master game sheet for shift win calculation purposes.

(3) The accuracy of inventory forms prepared at shift end shall be verified by the outgoing pit supervisor and a dealer. Alternatively, if either the outgoing pit supervisor or a dealer is not available, such verification may be provided by another pit supervisor or another supervisor from another gaming department. Verifications shall be evidenced by signature on the inventory form.

(4) If inventory forms are placed in the drop box, such action shall be performed hy someone other than a pit supervisor.

(e) *Table games computer generated documentation standards.* (1) The computer system shall be capable of generating adequate documentation of all information recorded on the source documents and transaction detail (e.g., fill/credit slips, markers, etc.).

(2) This documentation shall be restricted to authorized personnel.

(3) The documentation shall include, at a minimum:

(i) System exception information (e.g., appropriate system parameter information, corrections, voids, etc.); and

(ii) Personnel access listing, which includes, at a minimum:

(A) Employee name;

(B) Employee identification number (if applicable); and

(C) Listing of functions employees can perform or equivalent means of identifying the same.

(f) *Standards for playing cards and dice.* (1) Playing cards and dice shall be maintained in a secure location to prevent unauthorized access and to reduce the possibility of tampering.

(2) Used cards and dice shall be maintained in a secure location until marked, scored, or destroyed, in a manner subject to the approval of the Tribal gaming regulatory authority, to prevent unauthorized access and reduce the possibility of tampering.

(3) The Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall establish a reasonable time period, which shall not exceed seven (7) days of use, within which to mark and remove cards and dice from play.

(i) This standard shall not apply where playing cards or dice are retained for an investigation.

(ii) [Reserved]

(4) A card control log shall be maintained that documents when cards and dice are received on site, distributed to and returned from tables and removed from the gaming operation.

(g) *Standards for supervision.* Pit supervisory personnel (with authority equal to or greater than those being supervised) shall provide supervision of all table games.

(h) *Analysis of table game performance standards.* (1) Records shall be maintained by day and shift indicating any single-deck blackjack games that were dealt for an entire shift.

(2) Records reflecting hold percentage by table and type of game shall be maintained by shift, by day, cumulative month-to-date, and cumulative year-to-date.

(3) This information shall be presented to and reviewed by management independent of the pit department on at least a monthly basis.

(4) The management in paragraph (h)(3) of this section shall investigate any unusual fluctuations in hold percentage with pit supervisory personnel.

(5) The results of such investigations shall be documented in writing and maintained.

(i) *Accounting/auditing standards.* (1) The accounting and auditing procedures shall be performed by personnel who are independent of the transactions being audited/accounted for.

(2) If a table game has the capability to determine drop (e.g., bill-in/coin-drop meters, bill acceptor, computerized record, etc.) the dollar amount of the

drop shall be reconciled to the actual drop by shift.

(3) Accounting/auditing employees shall review exception reports for all computerized table games systems at least monthly for propriety of transactions and unusual occurrences.

(4) All noted improper transactions or unusual occurrences shall be investigated with the results documented.

(5) Evidence of table games auditing procedures and any follow-up performed shall be maintained and be available upon request by the Commission.

(6) A daily recap shall be prepared for the day and month-to-date which shall include the following information:

(i) Pit credit issues;

(ii) Pit credit payments in chips;

(iii) Pit credit payments in cash;

(iv) Drop;

(v) Win; and

(vi) Gross revenue.

(j) *Marker credit play.* If a gaming operation allows marker credit play (exclusive of rim credit and call bets), the following standards shall apply:

(i) A marker system shall allow for credit to be both issued and repaid in the pit.

(ii) Prior to the issuance of gaming credit to a player, the employee extending the credit shall contact the cashier or other independent source to determine if the player's credit limit has been properly established and there is sufficient remaining credit available for the advance.

(iii) Proper authorization of credit extension in excess of the previously established limit shall be documented.

(iv) The amount of credit extended shall be communicated to the cage or another independent source and the amount documented within a reasonable time subsequent to each issuance.

(v) The marker form shall be prepared in at least triplicate form (triplicate form being defined as three parts performing the functions delineated in the standard in paragraph (j)(1)(vi) of this section), with a preprinted or concurrently-printed marker number, and utilized in numerical sequence. (This requirement shall not preclude the distribution of batches of markers to various pits.)

(vi) At least three parts of each separately numbered marker form shall be utilized as follows:

(A) Original shall be maintained in the pit until settled or transferred to the cage;

(B) Payment slip shall be maintained in the pit until the marker is settled or transferred to the cage. If paid in the pit, the slip shall be inserted in the table game drop box. If not paid in the pit, the slip shall be transferred to the cage with the original;

(C) Issue slip shall be inserted into the appropriate table game drop box when credit is extended or when the player has signed the original.

(vii) When marker documentation (e.g., issue slip and payment slip) is inserted in the drop box, such action shall be performed by the dealer or boxman at the table.

(viii) A record shall be maintained which details the following (e.g., master credit record retained at the pit podium):

(A) The signature or initials of the individual(s) approving the extension of credit (unless such information is contained elsewhere for each issuance);

(B) The legible name of the individual receiving the credit;

(C) The date and shift of granting the credit;

(D) The table on which the credit was extended;

(E) The amount of credit issued;

(F) The marker number;

(G) The amount of credit remaining after each issuance or the total credit available for all issuances;

(H) The amount of payment received and nature of settlement (e.g., credit slip number, cash, chips, etc.); and

(I) The signature or initials of the individual receiving payment/settlement.

(ix) The forms required in paragraphs (j)(1)(v), (vi), and (viii) of this section shall be safeguarded, and adequate procedures shall be employed to control the distribution, use, and access to these forms.

(x) All credit extensions shall be initially evidenced by lammer buttons, which shall be displayed on the table in public view and placed there by supervisory personnel.

(xi) Marker preparation shall be initiated and other records updated within approximately one hand of play following the initial issuance of credit to the player.

(xii) Lammer buttons shall be removed only by the dealer or boxman employed at the table upon completion of a marker transaction.

(xiii) The original marker shall contain at least the following information:

(A) Marker number;

(B) Player's name and signature;

(C) Date; and

(D) Amount of credit issued.

(xiv) The issue slip or stub shall include the same marker number as the original, the table number, date and time of issuance, and amount of credit issued. The issue slip or stub shall also include the signature of the individual extending the credit, and the signature or initials of the dealer or boxman at the applicable table, unless this information is included on another document verifying the issued marker.

(xv) The payment slip shall include the same marker number as the original. When the marker is paid in full in the pit, it shall also include the table number where paid, date and time of payment, nature of settlement (cash, chips, etc.), and amount of payment. The payment slip shall also include the signature of a pit supervisor acknowledging payment, and the signature or initials of the dealer or boxman receiving payment, unless this information is included on another document verifying the payment of the marker.

(xvi) When partial payments are made in the pit, a new marker shall be completed reflecting the remaining balance and the marker number of the marker originally issued.

(xvii) When partial payments are made in the pit, the payment slip of the marker which was originally issued shall be properly cross-referenced to the new marker number, completed with all information required by paragraph (j)(1)(xv) of this section, and inserted into the drop box.

(xviii) The cashier's cage or another independent source shall be notified when payments (full or partial) are made in the pit so that cage records can be updated for such transactions. Notification shall be made no later than when the patron's play is completed or at shift end, whichever is earlier.

(xix) All portions of markers, both issued and unissued, shall be safeguarded and procedures shall be employed to control the distribution, use and access to the forms.

(xx) An investigation shall be performed to determine the cause and responsibility for loss whenever marker forms, or any part thereof, are misusing. The result of the investigation shall be documented and maintained for inspection.

(xxi) When markers are transferred to the cage, marker transfer forms or marker credit slips (or similar documentation) shall be utilized and such documents shall include, at a minimum, the date, time, shift, marker number(s), table number(s), amount of each marker, the total amount transferred, signature of pit supervisor releasing instruments from the pit, and the signature of cashier verifying receipt of instruments at the cage.

(xxii) All markers shall be transferred to the cage within 24 hours of issuance.

(xxiii) Markers shall be transported to the cashier's cage by an individual who is independent of the marker issuance and payment functions (pit clerks may perform this function).

(2) [Reserved]

(k) *Name credit instruments accepted in the pit.* For the purposes of this paragraph, name credit instruments means personal checks, payroll checks, counter checks, hold checks, traveler's checks, or other similar instruments that are accepted in the pit as a form of credit issuance to a player with an approved credit limit.

(2) The following standards shall apply if name credit instruments are accepted in the pit:

(i) A name credit system shall allow for the issuance of credit without using markers;

(ii) Prior to accepting a name credit instrument, the employee extending the credit shall contact the cashier or another independent source to determine if the player's credit limit has been properly established and the remaining credit available is sufficient for the advance;

(iii) All name credit instruments shall be transferred to the cashier's cage (utilizing a two-part order for credit) immediately following the acceptance of the instrument and issuance of chips (if name credit instruments are transported accompanied by a credit slip, an order for credit is not required);

(iv) The order for credit (if applicable) and the credit slip shall include the patron's name, amount of the credit instrument, the date, time, shift, table number, signature of pit supervisor releasing instrument from pit, and the signature of cashier verifying receipt of instrument at the cage;

(v) The procedures for transacting table credits at standards in paragraphs (j)(1)(xvi) through (xxiii) of this section shall be strictly adhered to; and

(vi) The acceptance of payments in the pit for name credit instruments shall be prohibited.

(l) *Call bets.*

(1) The following standards shall apply if call bets are accepted in the pit:

(i) A call bet shall be evidenced by the placement of a lammer button, chips, or other identifiable designation in an amount equal to that of the wager in a specific location on the table;

(ii) The placement of the lammer button, chips, or other identifiable designation shall be performed by supervisory/boxmen personnel. The placement may be performed by a dealer only if the supervisor physically observes and gives specific authorization;

(iii) The call bet shall be settled at the end of each hand of play by the preparation of a marker, repayment of the credit extended, or the payoff of the winning wager. Call bets extending beyond one hand of play shall be prohibited; and

(iv) The removal of the lammer button, chips, or other identifiable designation shall be performed by the dealer/boxman upon completion of the call bet transaction.

(2) [Reserved]

(m) *Rim credit.*

(1) The following standards shall apply if rim credit is extended in the pit:

(i) Rim credit shall be evidenced by the issuance of chips to be placed in a neutral zone on the table and then extended to the patron for the patron to wager, or to the dealer to wager for the patron, and by the placement of a lammer button or other identifiable designation in an amount equal to that of the chips extended; and

(ii) Rim credit shall be recorded on player cards, or similarly used documents, which shall be:

(A) Prenumbered or concurrently numbered and accounted for by a department independent of the pit;

(B) For all extensions and subsequent repayments, evidenced by the initials or signatures of a supervisor and the dealer attesting to the validity of each credit extension and repayment;

(C) An indication of the settlement method (e.g., serial number of marker issued, chips, cash);

(D) Settled no later than when the patron leaves the table at which the card is prepared;

(E) Transferred to the accounting department on a daily basis; and

(F) Reconciled with other forms utilized to control the issuance of pit credit (e.g., master credit records, table cards).

(2) [Reserved]

(n) *Foreign currency.* (1) The following standards shall apply if foreign currency is accepted in the pit:

(i) Foreign currency transactions shall be authorized by a pit supervisor/boxman who completes a foreign currency exchange form before the exchange for chips or tokens;

(ii) Foreign currency exchange forms include the country of origin, total face value, amount of chips/token extended (i.e., conversion amount), signature of supervisor/boxman, and the dealer completing the transaction;

(iii) Foreign currency exchange forms and the foreign currency shall be inserted in the drop box by the dealer; and

(iv) Alternate procedures specific to the use of foreign valued gaming chips shall be developed by the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority.

(2) [Reserved]

§ 542.13 What are the minimum internal control standards for gaming machines?

(a) *Standards for gaming machines.*

(1) For this section only, credit or customer credit means a unit of value equivalent to cash or cash equivalents deposited, wagered, won, lost, or redeemed by a patron.

(2) Coins shall include tokens.

(3) For all computerized gaming machine systems, a personnel access listing shall be maintained which includes at a minimum:

(i) Employee name; or

(ii) Employee identification number (or equivalent); and

(iii) Listing of functions employee can perform or equivalent means of identifying same.

(b) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(c) *Standards for drop and count.* The procedures for the collection of the gaming machine drop and the count thereof shall comply with § 542.21, § 542.31, or § 542.41 (as applicable).

(d) *Jackpot payouts, gaming machines fills, short pays and accumulated credit payouts standards.* (1) For jackpot payouts and gaming machine fills, documentation shall include the following information:

(i) Date and time;

(ii) Machine number;

(iii) Dollar amount of cash payout or gaming machine fill (both alpha and numeric) or description of personal property awarded, including fair market value. Alpha is optional if another unalterable method is used for evidencing the amount of the payout;

(iv) Game outcome (including reel symbols, card values, suits, etc.) for jackpot payouts. Game outcome is not required if a computerized jackpot/fill system is used;

(v) Signatures of at least two employees verifying and witnessing the payout or gaming machine fill; however, on graveyard shifts (eight-hour maximum) payouts/fills less than $100 can be made without the payout/fill being witnessed if the second person signing can reasonably verify that a payout/fill is justified. Alternatively, with regard to jackpot payouts, the signature of one employee is sufficient

if an on-line accounting system is utilized and the jackpot is less than $1,200; and

(vi) Preprinted or concurrently printed sequential number.

(2) Jackpot payouts over a predetermined amount shall require the signature and verification of a supervisory or management employee independent of the gaming machine department. This predetermined amount shall be authorized by management (subject to the approval of the Tribal gaming regulatory authority), documented, and maintained.

(3) For short pays of $10.00 or more, and payouts required for accumulated credits, the payout form includes:

(i) Date and time;

(ii) Machine number;

(iii) Dollar amount of payout (both alpha and numeric); and

(iv) Signatures of at least two employees verifying and witnessing the payout.

(4) Computerized jackpot/fill systems shall be restricted so as to prevent unauthorized access and fraudulent payouts by one individual as required by § 542.16(a).

(5) Payout forms shall be controlled and routed in a manner that precludes any one individual from producing a fraudulent payout by forging signatures or by altering the amount paid out subsequent to the payout and misappropriating the funds.

(e) *Promotional payouts or awards.* (1) If a gaming operation offers promotional payouts or awards that are not reflected on the gaming machine pay table, then the payout form/documentation shall include:

(i) Date and time;

(ii) Machine number and denomination;

(iii) Dollar amount of payout or description of personal property (e.g., jacket, toaster, car, etc.), including fair market value;

(iv) Type of promotion (e.g., double jackpots, four-of-a-kind bonus, etc.); and

(v) Signature of at least one employee authorizing and completing the transaction.

(2) [Reserved]

(f) *Gaming machine department funds standards.* (1) The gaming machine booths and change banks, which are active during the shift, shall be counted down and reconciled each shift utilizing appropriate accountability documentation.

(2) The wrapping of loose gaming machine booth and cage cashier coin shall be performed at a time or location that does not interfere with the hard count/wrap process or the accountability of that process.

(3) A record shall be maintained evidencing the transfers of wrapped and unwrapped coins and retained for seven (7) days.

(g) *EPROM control standards.* (1) At least annually, procedures shall be performed to insure the integrity of a sample of gaming machine game program EPROMs, or other equivalent game software media, by personnel independent of the gaming operation or the machines being tested.

(2) The Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall develop and implement procedures for the following:

(i) Removal of EPROMs, or other equivalent game software media, from devices, the verification of the existence of errors as applicable, and the correction via duplication from the master game program EPROM, or other equivalent game software media.

(ii) Copying one gaming device program to another approved program;

(iii) Verification of duplicated EPROMs before being offered for play;

(iv) Receipt and destruction of EPROMs, or other equivalent game software media; and

(v) Securing the EPROM, or other equivalent game software media, duplicator, and master game EPROMs, or other equivalent game software media, from unrestricted access.

(3) The master game program number, par percentage, and the pay table shall be verified to the par sheet when initially received from the manufacturer.

(4) Gaming machines with potential jackpots in excess of $100,000 shall have the game software circuit boards locked or physically sealed. The lock or seal shall necessitate the presence of an individual independent of the gaming machine department to access the device game program EPROM, or other equivalent game software media. If a seal is used to secure the board to the frame of the gaming device, it shall be pre-numbered.

(5) Records that document the procedures in paragraph (g)(2)(i) of this section shall include the following information:

(i) Date;

(ii) Machine number (source and destination);

(iii) Manufacturer;

(iv) Program number;

(v) Personnel involved;

(vi) Reason for duplication;

(vii) Disposition of any permanently removed EPROM, or other equivalent game software media; (viii) Seal numbers, if applicable; and

(ix) Approved testing lab approval numbers, if available.

(6) EPROMS, or other equivalent game software media, returned to gaming devices shall be labeled with the program number. Supporting documentation shall include the date, program number, information identical to that shown on the manufacturer's label, and initials of the individual replacing the EPROM, or other equivalent game software media.

(h) *Standards for evaluating theoretical and actual hold percentages.* (1) Accurate and current theoretical hold worksheets shall be maintained for each gaming machine.

(2) For those gaming machines or groups of identical machines (excluding multi-game machines) with differences in theoretical payback percentage exceeding a 4% spread between the minimum and maximum theoretical payback, an employee or department independent from the gaming machine department shall:

(i) On a quarterly basis, record the meters that contain the number of plays by wager (i.e., one coin, two coins, etc.);

(ii) On an annual basis, calculate the theoretical hold percentage based on the distribution of plays by wager type;

(iii) On an annual basis, adjust the machine(s) theoretical hold percentage in the gaming machine statistical report to reflect this revised percentage; and

(iv) For those gaming machines that do not record the number of plays by wager, the following alternative standard shall apply:

(A) On at least an annual basis, calculate the actual hold percentage for each gaming machine;

(B) On at least an annual basis, adjust the theoretical hold percentages for each gaming machine to the previously calculated actual hold percentage; and

(C) The adjusted theoretical hold percentage shall be within the spread between the minimum and maximum theoretical payback percentages.

(3) For multi-game machines with a four percent (4%) or greater spread between minimum and maximum theoretical payback percentages, an employee or department independent of the gaming machine department shall:

(i) Weekly, record the total coin-in meter;

(ii) Quarterly, record the coin-in meters for each game contained in the machine; and

(iii) On an annual basis, adjust the theoretical hold percentage to a weighted average based upon the ratio of coin-in for each game.

(4) The adjusted theoretical hold percentage for multi-game machines may be combined for machines with

exactly the same game mix throughout the year.

(5) The theoretical hold percentages used in the gaming machine analysis reports should be within the performance standards set by the manufacturer.

(6) Records shall be maintained for each machine indicating the dates and type of changes made and the recalculation of theoretical hold as a result of the changes.

(7) Records shall be maintained for each machine which indicate the date the machine was placed into service, the date the machine was removed from operation, the date the machine was placed back into operation, and any changes in machine numbers and designations.

(8) All of the gaming machines shall contain functioning meters which shall record coin-in or credit-in, or on-line gaming machine monitoring system that captures similar data.

(9) All gaming machines with bill acceptors shall contain functioning bill-in meters that record the dollar amounts or number of bills accepted by denomination.

(10) Gaming machine in-meter readings shall be recorded at least weekly (monthly for Tier A and Tier B gaming operations) immediately prior to or subsequent to a gaming machine drop. On-line gaming machine monitoring systems can satisfy this requirement. However, the time between readings may extend beyond one week in order for a reading to coincide with the end of an accounting period only if such extension is for no longer than six days. In-meter readings should be retained for at least five years.

(11) The employee who records the in-meter reading shall either be independent of the hard count team or shall be assigned on a rotating basis, unless the in-meter readings are randomly verified quarterly for all gaming machines and cash acceptors by someone other than the regular in-meter reader.

(12) Upon receipt of the meter reading summary, the accounting department shall review all meter readings for reasonableness using pre-established parameters.

(13) Prior to final preparation of statistical reports, meter readings that do not appear reasonable shall be reviewed with gaming machine department employees, and exceptions documented, so that meters can be repaired or clerical errors in the recording of meter readings can be corrected.

(14) A report shall be produced at least monthly showing month-to-date, year-to-date (previous twelve (12) months data preferred), and if practicable, life-to-date actual hold percentage computations for individual machines and a comparison to each machine's theoretical hold percentage previously discussed.

(15) Each change to a gaming machine's theoretical hold percentage, including progressive percentage contributions, shall result in that machine being treated as a new machine in the statistical reports (i.e., not commingling various hold percentages).

(16) If promotional payouts or awards are included on the gaming machine statistical reports, it shall be in a manner that prevents distorting the actual hold percentages of the affected machines.

(17) A report shall be produced at least monthly showing year-to-date combined gaming machine performance, by denomination. The report shall include the following for each denomination:

(i) Combined actual hold percentage;

(ii) Percentage variance; and

(iii) Projected dollar variance (i.e., coin-in times the percentage variance).

(18) The statistical reports shall be reviewed by both gaming machine department management and management employees independent of the gaming machine department on at least a monthly basis.

(19) Large variances (± 3% recommended) between theoretical hold and actual hold, for those machines in play for more than six (6) months, shall be investigated and resolved with the findings documented in a timely manner.

(20) Maintenance of the on-line gaming machine monitoring system data files shall be performed by a department independent of the gaming machine department. Alternatively, maintenance may be performed by gaming machine supervisory employees if sufficient documentation is generated and it is randomly verified on a monthly basis by employees independent of the gaming machine department.

(21) Updates to the on-line gaming machine monitoring system to reflect additions, deletions, or movements of gaming machines shall he made at least weekly prior to in-meter readings and the weigh process.

(i) *Gaming machine hopper contents standards.* When machines are removed from the floor, the gaming machine drop and hopper contents shall be counted and recorded by at least two employees with appropriate documentation being routed to the accounting department for proper recording and accounting for initial hopper loads.

(j) *Player tracking system.*

(1) The following standards apply if a player tracking system is utilized:

(i) The player tracking system shall be secured so as to prevent unauthorized access (e.g., changing passwords at least quarterly and physical access to computer hardware, etc.).

(ii) The addition of points to members' accounts other than through actual gaming machine play shall be sufficiently documented (including substantiation of reasons for increases) and shall be authorized by a department independent of the player tracking and gaming machines. Alternatively, addition of points to members' accounts may he authorized by gaming machine supervisory employees if sufficient documentation is generated and it is randomly verified by employees independent of the gaming machine department on a quarterly basis.

(iii) Booth employees who redeem points for members shall be allowed to receive lost cards, provided that they are immediately deposited into a secured container for retrieval by independent personnel.

(iv) Changes to the player tracking system parameters, such as point structures and employee access, shall be performed by supervisory employees independent of the gaming machine department. Alternatively, changes to player tracking system parameters may be performed by gaming machine supervisory employees if sufficient documentation is generated and it is randomly verified by supervisory employees independent of the gaming machine department on a monthly basis.

(v) All other changes to the player tracking system shall be appropriately documented.

(2) [Reserved]

(k) *In-house progressive gaming machine standards.* (1) A meter that shows the amount of the progressive jackpot shall be conspicuously displayed at or near the machines to which the jackpot applies.

(i) At least once each day, each gaming operation shall record the amount shown on each progressive jackpot meter at the gaming operation's establishment except for those jackpots that can be paid directly from the machine's hopper;

(ii) Explanations for meter reading decreases shall be maintained with the progressive meter reading sheets, and where the payment of a jackpot is the explanation for a decrease, the gaming operation shall record the jackpot payout number on the sheet or have the number reasonably available; and

(iii) Each gaming operation shall record the base amount of each progressive jackpot the gaming operation offers.

(iv) The Tribal gaming regulatory authority shall approve procedures specific to the transfer of progressive amounts in excess of the base amount to other gaming machines. Such procedures may also include other methods of distribution that accrue to the benefit of the gaming public via an award or prize.

(2) [Reserved]

(l) *Wide area progressive gaming machine standards.*

(1)A meter that shows the amount of the progressive jackpot shall be conspicuously displayed at or near the machines to which the jackpot applies.

(i) At least once each day, each gaming operation shall record the amount shown on each progressive jackpot meter at the gaming operation's establishment except for those jackpots that can be paid directly from the machine's hopper;

(ii) Explanations for meter reading decreases shall be maintained with the progressive meter reading sheets, and where the payment of a jackpot is the explanation for a decrease, the gaming operation shall record the jackpot payout number on the sheet or have the number reasonably available; and

(iii) Each gaming operation shall record the base amount of each progressive jackpot the gaming operation offers.

(2) As applicable to participating gaming operations, the wide area progressive gaming machine system shall be adequately restricted to prevent unauthorized access (e.g., changing passwords at least quarterly, restrict access to EPROMs or other equivalent game software media, and restrict physical access to computer hardware, etc.).

(3) For the wide area progressive system, procedures shall be developed, implemented, documented or contracted for:

(i) Reconciliation of meters and jackpot payouts;

(ii) Collection/drop of gaming machine funds;

(iii) Jackpot verification and payment and billing to gaming operations on pro-rata basis;

(iv) System maintenance;

(v) System accuracy; and

(vi) System security.

(4) Reports, where applicable, adequately documenting the procedures required in paragraph (1)(3) of this section shall be generated and retained.

(m) *Accounting/auditing standards.*

(1) Gaming machine accounting/auditing procedures shall be performed by employees who are independent of the transactions being reviewed.

(2) For computerized player tracking systems, an accounting/auditing employee shall perform the following procedures at least one day per month:

(i) Foot all points-redeemed documentation and trace to the system-generated totals; and

(ii) Review all points-redeemed documentation for propriety.

(3) For on-line gaming machine monitoring systems, procedures shall be performed at least monthly to verify that the system is transmitting and receiving data from the gaming machines properly and to verify the continuing accuracy of the coin-in meter readings as recorded in the gaming machine statistical report.

(4) For weigh scale and currency interface systems, for at least one drop period per month accounting/auditing employees shall make such comparisons as necessary to the system generated count as recorded in the gaming machine statistical report, in total. Discrepancies shall be resolved prior to generation/distribution of gaming machine reports.

(5) For each drop period, accounting/auditing personnel shall compare the coin-to-drop meter reading to the actual drop amount. Discrepancies should be resolved prior to generation/distribution of on-line gaming machine monitoring system statistical reports.

(6) Follow-up shall be performed for any one machine having an unresolved variance between actual coin drop and coin-to-drop meter reading in excess of 3% or $25.00, whichever is greater. The follow-up performed and results of the investigation shall be documented and maintained.

(7) At least weekly, accounting/auditing employees shall compare the bill-in meter reading to the total currency acceptor drop amount for the week. Discrepancies shall be resolved before the generation/distribution of gaming machine statistical reports.

(8) Follow-up shall be performed for any one machine having an unresolved variance between actual currency drop and bill-in meter reading in excess of $200.00. The follow-up performed and results of the investigation shall be documented and maintained.

(9) At least annually, accounting/auditing personnel shall randomly verify that EPROM or other equivalent game software media changes are properly reflected in the gaming machine analysis reports.

(10) Accounting/auditing employees shall review exception reports for all computerized gaming machine systems on a daily basis for propriety of transactions and unusual occurrences.

(11) All gaming machine auditing procedures and any follow-up performed shall be documented and maintained for inspection.

(n) *Cash-out tickets.* For gaming machines that utilize cash-out tickets, the following standards apply. This standard is not applicable to Tiers A and B. Tiers A and B shall develop adequate standards governing the security over the issuance of the cash-out paper to the gaming machines and the redemption of cash-out slips.

(1) In addition to the applicable auditing and accounting standards in paragraph (m) of this section, on a quarterly basis, the gaming operation shall foot all jackpot cash-out tickets equal to or greater than $1,200 and trace totals to those produced by the host validation computer system.

(2) The customer may request a cash-out ticket from the gaming machine that reflects all remaining credits. The cash-out ticket shall be printed at the gaming machine by an internal document printer. Cash-out ticket shall be valid for a time period specified by the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority. Tickets may be redeemed for payment or inserted in another gaming machine and wagered, if applicable, during the specified time period.

(3) The customer shall redeem the cash-out ticket at a change booth or cashiers' cage. Alternatively, if a gaming operation utilizes a remote computer validation system, the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall develop alternate standards, for the maximum amount that can be redeemed, which shall not exceed $1,199.99 per cash-out ticket. Once the cash-out ticket is presented for redemption, the following shall occur:

(i) Scan the bar code via an optical reader or its equivalent; or

(ii) Input the cash-out ticket validation number into the computer.

(4) The information contained in paragraph (n)(3) of this section shall be communicated to the host computer. The host computer shall verify the authenticity of the cash-out ticket and communicate directly to the redeemer of the cash-out ticket.

(5) If valid, the redeemer of the cash-out ticket pays the customer the appropriate amount and the cash-out ticket is electronically noted "paid" in the system. The "paid" cash-out ticket shall remain in the cashiers" bank for reconciliation purposes. The host

validation computer system shall electronically reconcile the cashier's banks for the paid cashed-out tickets.

(6) If invalid, the host computer shall notify the redeemer of the cash-out ticket that one of the following conditions exists:

(i) Serial number cannot be found on file (stale date, forgery, etc.);

(ii) Cash-out ticket has already been paid; or

(iii) Amount of cash-out ticket differs from amount on file. The cashier shall refuse payment to the customer and notify a supervisor of the invalid condition. The supervisor shall resolve the dispute.

(7) If the host validation computer system temporarily goes down, cashiers may redeem cash-out tickets after recording the following:

(i) Serial number of the cash-out ticket;

(ii) Date;

(iii) Dollar amount; and

(iv) Issuing gaming machine number.

(8) Cash-out tickets shall be validated as expeditiously as possible when the host validation computer system is restored.

(9) The Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall develop and implement procedures to control cash-out ticket paper which shall include procedures which:

(i) Mitigate the risk of counterfeiting of cash-out ticket paper;

(ii) Adequately controls the inventory of the cash-out ticket paper; and

(iii) Provide for the destruction of all unused cash-out ticket paper.

(10) If the host validation computer system is down for more than four hours, the gaming operation shall promptly notify the Tribal gaming regulatory authority or its designated representative.

(11) These gaming machine systems shall comply with all other standards (as applicable) in this part including:

(i) Standards for bill acceptor drop and count;

(ii) Standards for coin drop and count; and

(iii) Standards concerning EPROMS or other equivalent game software media.

(o) *Account access cards.* For gaming machines that utilize account access cards to activate play of the machine, the following standards shall apply:

(1) *Equipment.* (i) A central computer, with supporting hardware and software, to coordinate network activities, provide system interface, and store and manage a player/account database;

(ii) A network of contiguous player terminals with touch-screen or button-controlled video monitors connected to an electronic selection device and the central computer via a communications network;

(iii) One or more electronic selection devices, utilizing random number generators, each of which selects any combination or combinations of numbers, colors, and/or symbols for a network of player terminals.

(2) *Player terminals standards.* (i) The player terminals are connected to a game server;

(ii) The game server shall generate and transmit to the bank of player terminals a set of random numbers, colors, and/or symbols at regular intervals. The subsequent game results are determined at the player terminal and the resulting information is transmitted to the account server;

(iii) The game server shall be housed in a game server room or a secure locked cabinet.

(3) *Patron account maintenance standards.* A central computer acting as an account server shall provide customer account maintenance and the deposit/withdrawal function of those account balances;

(ii) Patrons may access their accounts on the computer system by means of a account access card at the player terminal. Each player terminal may be equipped with a card reader and personal identification number (PIN) pad or touch screen array for this purpose;

(iii) All communications between the player terminal and the account server shall be encrypted for security reasons.

(4) *Patron account generation standards.* (i) A computer file for each patron shall be prepared by a clerk, with no incompatible functions, prior to the patron being issued an account access card to be utilized for machine play. The patron may select his/her PIN to be used in conjunction with the account access card.

(ii) The clerk shall sign-on with a unique password to a terminal equipped with peripherals required to establish a customer account. Passwords are issued and can only be changed by information technology personnel at the discretion of the department director.

(iii) After entering a specified number of incorrect PIN entries at the cage or player terminal, the patron shall be directed to proceed to the Gaming Machine Information Center to obtain a new PIN. If a patron forgets, misplaces or requests a change to their PIN, the patron shall proceed to the Gaming Machine Information Center.

(5) *Deposit of credits standards.* (i) The cashier shall sign-on with a unique password to a cashier terminal equipped with peripherals required to complete the credit transactions. Passwords are issued and can only be changed by information technology personnel at the discretion of the department director.

(ii) The patron shall present cash, chips, coin or coupons along with their account access card to a cashier to deposit credits.

(iii) The cashier shall complete the transaction by utilizing a card scanner which the cashier shall slide the patron's account access card through.

(iv) The cashier shall accept the funds from the patron and enter the appropriate amount on the cashier terminal.

(v) A multi-part deposit slip shall be generated by the point of sale receipt printer. The cashier shall direct the patron to sign two copies of the deposit slip receipt. The original of the signed deposit slip shall be given to the patron. The first copy of the signed deposit slip shall be secured in the cashier's cash drawer.

(vi) The cashier shall verify the patron's balance before completing the transaction. The cashier shall secure the funds in their cash drawer and return the account access card to the patron.

(6) *Prize standards.* (i) Winners at the gaming machines may receive cash, prizes redeemable for cash or merchandise.

(ii) If merchandise prizes are to be awarded, the specific type of prize or prizes that may be won shall be disclosed to the player before the game begins.

(iii) The redemption period of account access cards, as approved by the Tribal gaming regulatory authority, shall be conspicuously posted in the gaming operation.

(7) *Credit withdrawal.* The patron shall present their account access card to a cashier to withdraw their credits. The cashier shall perform the following:

(i) Scan the account access card;

(ii) Request the patron to enter their PIN, if the PIN was selected by the patron;

(iii) The cashier shall ascertain the amount the patron wishes to withdraw and enter the amount into the computer;

(iv) A multi-part withdrawal slip shall be generated by the point of sale receipt printer. The cashier shall direct the patron to sign the original and one copy of the withdrawal slip;

(v) The cashier shall verify that the account access card and the patron match by:

(A) Comparing the patron to image on the computer screen of patron's picture ID; or

(B) Comparing the patron signature on the withdrawal slip to signature on the computer screen.

(vi) The cashier shall verify the patron's balance before completing the transaction. The cashier shall pay the patron the appropriate amount, issue the patron the original withdrawal slip and return the account access card to the patron;

(vii) The first copy of the withdrawal slip shall be placed in the cash drawer. All account transactions shall be accurately tracked by the account server computer system. The first copy of the withdrawal slip shall be forwarded to the accounting department at the end of the gaming day; and

(viii) In the event the imaging function is temporarily disabled, patrons shall be required to provide positive ID for cash withdrawal transactions at the cashier stations.

(p) *Smart cards.* All smart cards (i.e., cards that possess the means to electronically store and retrieve data) that maintain the only source of account data are prohibited.

§ 542.14 What are the minimum internal control standards for the cage?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Personal checks, cashier's checks, payroll checks, and counter checks.* (1) If personal checks, cashier's checks, payroll checks, or counter checks are cashed at the cage, the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall implement appropriate controls for purposes of security and integrity.

(2) The Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures for the acceptance of personal checks, collecting and recording checks returned to the gaming operation after deposit, re-deposit, and write-off authorization.

(3) When counter checks are issued, the following shall be included on the check:

(i) The patron's name and signature;

(ii) The dollar amount of the counter check (both alpha and numeric);

(iii) Patron's bank name and bank account number;

(iv) Date of issuance; and

(v) Signature or initials of the individual approving the counter check transaction.

(4) When traveler's checks or other guaranteed drafts such as cashier's checks are presented, the cashier shall comply with the examination and documentation procedures as required by the issuer.

(c) *Customer deposited funds.* If a gaming operation permits a customer to deposit funds with the gaming operation at the cage, the following standards shall apply.

(1) The receipt or withdrawal of a customer deposit shall be evidenced by at least a two-part document with one copy going to the customer and one copy remaining in the cage file.

(2) The multi-part receipt shall contain the following information:

(i) Same receipt number on all copies;

(ii) Customer's name and signature;

(iii) Date of receipt and withdrawal;

(iv) Dollar amount of deposit/withdrawal; and

(v) Nature of deposit (cash, check, chips); however,

(vi) Provided all of the information in paragraph (c)(2)(i) through (v) is available, the only required information for all copies of the receipt is the receipt number.

(3) The Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that:

(i) Maintain a detailed record by patron name and date of all funds on deposit;

(ii) Maintain a current balance of all customer cash deposits which are in the cage/vault inventory or accountability; and

(iii) Reconcile this current balance with the deposits and withdrawals at least daily.

(4) The gaming operation, subject to the approval of the Tribal gaming regulatory authority, shall describe the sequence of the required signatures attesting to the accuracy of the information contained on the customer deposit or withdrawal form ensuring that the form is signed by the cashier.

(5) All customer deposits and withdrawal transactions at the cage shall be recorded on a cage accountability form on a per-shift basis.

(6) Only cash, cash equivalents, chips, and tokens shall be accepted from customers for the purpose of a customer deposit.

(7) The Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that verify the patron's identity, including photo identification.

(8) A file for patrons shall be prepared prior to acceptance of a deposit.

(d) *Cage and vault accountability standards.* All transactions that flow through the cage shall be summarized on a cage accountability form on a per shift basis and shall be supported by documentation.

(2) The cage and vault (including coin room) inventories shall be counted by the oncoming and outgoing cashiers. These employees shall make individual counts for comparison of accuracy and maintenance of individual accountability. Such counts shall be recorded at the end of each shift during which activity took place. All discrepancies shall be noted and investigated.

(3) The gaming operation cash-on-hand shall include, but is not limited to, the following components:

(i) Currency and coins;

(ii) House chips, including reserve chips;

(iii) Personal checks, cashier's checks, counter checks, and traveler's checks for deposit;

(iv) Customer deposits;

(v) Chips on tables;

(vi) Hopper loads (coins put into machines when they are placed in service); and

(vii) Fills and credits (these documents shall be treated as assets and liabilities, respectively, of the cage during a business day. When win or loss is recorded at the end of the business day, they are removed from the accountability).

(4) The Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall establish a minimum bankroll formula to ensure the gaming operation maintains cash or cash equivalents (on hand and in the bank, if readily accessible) in an amount sufficient to satisfy obligations to the gaming operation's patrons as they are incurred. A suggested bankroll formula will be provided by the Commission upon request.

(e) *Chip and token standards.* The Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures for the receipt, inventory, storage, and destruction of gaming chips and tokens.

(f) *Coupon standards.* Any program for the exchange of coupons for chips, tokens, and/or another coupon program shall be approved by the Tribal gaming regulatory authority prior to implementation. If approved, the gaming operation shall establish and

comply with procedures that account for and control such programs.

(g) *Accounting/auditing standards.* (1) The cage accountability shall be reconciled to the general ledger at least monthly.

(2) A trial balance of gaming operation accounts receivable, including the name of the patron and current balance, shall be prepared at least monthly for active, inactive, settled or written-off accounts.

(3) The trial balance of gaming operation accounts receivable shall be reconciled to the general ledger each month. The reconciliation and any follow-up performed shall be documented and retained.

(4) On a monthly basis an evaluation of the collection percentage of credit issued to identify unusual trends shall be performed.

(5) All cage and credit accounting procedures and any follow-up performed shall he documented.

(h) *Extraneous items.* The Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall develop procedures to address the transporting of extraneous items, such as coats, purses, and/or boxes, into and out of the cage, coin room, count room, and/or vault.

§ 542.15 What are the minimum internal control standards for credit?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Credit standards.* The following standards shall apply if the gaming operation authorizes and extends credit to patrons:

(1) At least the following information shall be recorded for patrons who have credit limits or are issued credit (excluding personal checks, payroll checks, cashier's checks, and traveler's checks):

(i) Patron's name, current address, and signature;

(ii) Identification verifications;

(iii) Authorized credit limit;

(iv) Documentation of authorization by an individual designated by management to approve credit limits; and

(v) Credit issuances and payments.

(2) Prior to extending credit, the patron's gaming operation credit record and/or other documentation shall be examined to determine the following:

(i) Properly authorized credit limit;

(ii) Whether remaining credit is sufficient to cover the credit issuance; and

(iii) Identity of the patron (except for known patrons).

(3) Credit extensions over a specified dollar amount shall be approved by personnel designated by management.

(4) Proper approval of credit extensions over ten percent (10%) of the previously established limit shall be documented.

(5) The job functions of credit approval (i.e., establishing the patron's credit worthiness) and credit extension (i.e., advancing patron's credit) shall be segregated for credit extensions to a single patron of $10,000 or more per day (applies whether the credit is extended in the pit or the cage).

(6) If cage credit is extended to a single patron in an amount exceeding $2,500, appropriate gaming personnel shall be notified on a timely basis of the patrons playing on cage credit, the applicable amount of credit issued, and the available balance.

(7) Cage marker forms shall be at least two parts (the original marker and a payment slip), prenumbered by the printer or concurrently numbered by the computerized system, and utilized in numerical sequence.

(8) The completed original cage marker shall contain at least the following information:

(i) Marker number;

(ii) Player's name and signature; and

(iii) Amount of credit issued (both alpha and numeric).

(9) The completed payment slip shall include the same marker number as the original, date and time of payment, amount of payment, nature of settlement (cash, chips, etc.), and signature of cashier receiving the payment.

(c) *Payment standards.* All payments received on outstanding credit instruments shall be permanently recorded in the gaming operation's records.

(2) When partial payments are made on credit instruments, they shall be evidenced by a multi-part receipt (or another equivalent document) which contains:

(i) The same preprinted number on all copies;

(ii) Patron's name;

(iii) Date of payment;

(iv) Dollar amount of payment (or remaining balance if a new marker is issued), and nature of settlement (cash, chips, etc.);

(v) Signature of employee receiving payment; and

(vi) Number of credit instrument on which partial payment is being made.

(3) Unless account balances are routinely confirmed on a random basis by the accounting or internal audit departments, or statements are mailed by someone independent of the credit transactions and collections thereon, and the department receiving payments cannot access cash, then the following standards shall apply:

(i) The routing procedures for payments by mail require that they be received by a department independent of credit instrument custody and collection:

(ii) Such receipts by mail shall be documented on a listing indicating the customer's name, amount of payment, nature of payment (if other than a check), and date payment received; and

(iii) The total amount of the listing of mail receipts shall be reconciled with the total mail receipts recorded on the appropriate accountability form by the accounting department on a random hasis (for at least three days per month).

(d) *Access to credit documentation.*

(1) Access to credit documentation shall be restricted as follows:

(i) The credit information shall be restricted to those positions that require access and are so authorized by management;

(ii) Outstanding credit instruments shall be restricted to persons authorized by management; and

(iii) Written-off credit instruments shall be further restricted to individuals specified by management.

(2) [Reserved]

(e) *Maintenance of credit documentation.* (1) All extensions of cage credit, pit credit transferred to the cage, and subsequent payments shall be documented on a credit instrument control form.

(2) Records of all correspondence, transfers to and from outside agencies, and other documents related to issued credit instruments shall be maintained.

(f) *Write-off and settlement standards.* (1) Written-off or settled credit instruments shall be authorized in writing.

(2) Such authorizations shall be made by at least two management officials who are from departments independent of the credit transaction.

(g) *Collection agency standards.* (1) If credit instruments are transferred to collection agencies or other collection representatives, a copy of the credit instrument and a receipt from the collection representative shall be obtained and maintained until the original credit instrument is returned or payment is received.

(2) An individual independent of credit transactions and collections shall periodically review the documents in paragraph (g)(1) of this section.

(h) Accounting/auditing standards.

(1) An individual independent of the cage, credit, and collection functions shall perform all of the following at least three (3) times per year:

(i) Ascertain compliance with credit limits and other established credit issuance procedures;

(ii) Randomly reconcile outstanding balances of both active and inactive accounts on the accounts receivable listing to individual credit records and physical instruments;

(iii) Examine credit records to determine that appropriate collection efforts are being made and payments are being properly recorded; and

(iv) For a minimum of five (5) days per month, partial payment receipts shall be subsequently reconciled to the total payments recorded by the cage for the day and shall be numerically accounted for.

(2) [Reserved]

§ 542.16 What are the minimum internal control standards for information technology?

(a) *General controls for gaming hardware and software.* (1) Management shall take an active role in making sure that physical and logical security measures are implemented, maintained, and adhered to by personnel to prevent unauthorized access that could cause errors or compromise data or processing integrity.

(i) Management shall ensure that all new gaming vendor hardware and software agreements/contracts will contain language requiring the vendor to adhere to the tribal minimum internal control standards.

(ii) Physical security measures shall exist over computer, computer terminals, and storage media to prevent unauthorized access and loss of integrity of data and processing.

(iii) Access to systems software and application programs shall be limited to authorized personnel.

(iv) Access to computer data shall be limited to authorized personnel.

(v) Access to computer communications facilities, or the computer system, and information transmissions shall be limited to authorized personnel.

(vi) Standards in paragraph (a)(1) of this section shall apply to each applicable department within the gaming operation.

(2) The main computers (i.e., hardware, software, and data files) for each gaming application (e.g., keno, race and sports, gaming machines, etc.) shall be in a secured area with access restricted to authorized persons, including vendors.

(3) Access to computer operations shall be restricted to authorized personnel to reduce the risk of loss of integrity of data or processing.

(4) Incompatible duties shall be adequately segregated and monitored to prevent error in general information technology procedures to go undetected or fraud to be concealed.

(5) Non-information technology personnel shall be precluded from having unrestricted access to the secured computer areas.

(6) The computer systems, including application software, shall be secured through the use of passwords or other approved means where applicable. Management personnel or persons independent of the department being controlled shall assign and control access to system functions.

(7) Passwords shall be controlled as follows unless otherwise addressed in the standards in this section.

(i) Each user shall have their own individual password;

(ii) Passwords shall be changed at least quarterly with changes documented; and

(iii) For computer systems that automatically force a password change on a quarterly basis, documentation shall be maintained listing the systems and the date the user was given access.

(8) Adequate backup and recovery procedures shall be in place which include:

(i) Frequent backup of data files;

(ii) Backup of all programs;

(iii) Secured off-site storage of all backup data files and programs, or other adequate protection; and

(iv) Recovery procedures, which are tested on a sample basis at least annually with documentation of results.

(9) Adequate information technology department system documentation shall be maintained, including descriptions of hardware and software, operator manuals, etc.

(b) *Independence of information technology personnel.* (1) The information technology personnel shall be independent of the gaming areas (e.g., cage, pit, count rooms, etc.). Information technology personnel procedures and controls should be documented and responsibilities communicated.

(2) Information technology personnel shall be precluded from unauthorized access to:

(i) Computers and terminals located in gaming areas;

(ii) Source documents; and

(iii) Live data files (not test data).

(3) Information technology personnel shall be:

(i) Restricted from having unauthorized access to cash or other liquid assets; and

(ii) From initiating general or subsidiary ledger entries.

(c) *Program changes.*

(1) Program changes for in-house developed systems should be documented as follows:

(i) Requests for new programs or program changes shall be reviewed by the information technology supervisor. Approvals to begin work on the program shall be documented;

(ii) A written plan of implementation for new and modified programs shall be maintained and include, at a minimum, the date the program is to be placed into service, the nature of the change, a description of procedures required in order to bring the new or modified program into service (conversion or input of data, installation procedures, etc.), and an indication of who is to perform all such procedures;

(iii) Testing of new and modified programs shall be performed and documented prior to implementation; and

(iv) A record of the final program or program changes, including evidence of user acceptance, date in service, programmer, and reason for changes, shall be documented and maintained.

(2) [Reserved]

(d) *Security logs.* (1) Computer security logs, if generated by the system, shall be reviewed by information technology supervisory personnel for evidence of:

(i) Multiple attempts to log-on, or alternatively, the system shall deny user access after three attempts to log-on;

(ii) Unauthorized changes to live data files; and

(iii) Any other unusual transactions.

(2) This paragraph shall not apply to personal computers.

(e) *Remote dial-up.* (1) If remote dial-up to any associated equipment is allowed for software support, the gaming operation shall maintain an access log that includes:

(i) Name of employee authorizing modem access;

(ii) Name of authorized programmer or manufacturer representative;

(iii) Reason for modem access;

(iv) Description of work performed; and

(v) Date, time, and duration of access.

(2) [Reserved]

(f) *Document storage.* (1) Documents may be scanned or directly stored to an unalterable storage medium under the following conditions.

(i) The storage medium shall contain the exact duplicate of the original document.

(ii) All documents stored on the storage medium shall be maintained with a detailed index containing the

gaming operation department and date. This index shall be available upon request by the Commission.

(iii) Upon request and adequate notice by the Commission, hardware (terminal, printer, etc.) shall be made available in order to perform auditing procedures.

(iv) Controls shall exist to ensure the accurate reproduction of records up to and including the printing of stored documents used for auditing purposes.

(v) The storage medium shall be retained for a minimum of five years.

(vi) Original documents must be retained until the books and records have been audited by an independent certified public accountant.

(2) [Rserved]

§ 542.17 What are the minimum internal control standards for complimentary services or items?

(a) Each Tribal gaming regulatory authority or gaming operation shall establish procedures for the authorization, issuance, and tracking of complimentary services and items, including cash and non-cash gifts, and the gaming operation shall comply with such procedures. Such procedures must be approved by the Tribal gaming regulatory authority and shall include, but shall not be limited to, the procedures by which the gaming operation delegates to its employees the authority to approve the issuance of complimentary services and items, and the procedures by which conditions or limits, if any, which may apply to such authority are established and modified (including limits based on relationships between the authorizer and recipient), and shall further include effective provisions for audit purposes.

(b) At least monthly, accounting, information technology, or audit personnel that cannot grant or receive complimentary privileges shall prepare reports that include the following information:

(1) Name of patron who received the complimentary service or item;

(2) Name(s) of authorized issuer of the complimentary service or item;

(3) The actual cash value of the complimentary service or item;

(4) The type of complimentary service or item (i.e., food, beverage, etc.); and

(5) Date the complimentary service or item was issued.

(c) The report required by paragraph (b) of this section shall not be required to include complimentary services or items below a reasonable amount to be established by the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority.

(d) The internal audit or accounting departments shall review the reports required in paragraph (b) of this section at least monthly. These reports shall be made available to the Tribe, the Tribal gaming regulatory authority, and the Commission upon request.

§ 542.18 How does a gaming operation apply for a variance from the standards of this part?

(a) *Tribal gaming regulatory authority approval.* (1) A Tribal gaming regulatory authority may approve a variance for a gaming operation if it has determined that the variance will achieve a level of control sufficient to accomplish the purpose of the standard it is to replace.

(2) For each enumerated standard for which the Tribal gaming regulatory authority approves a variance, it shall submit to the Commission, within 30 days, a detailed report, which shall include the following:

(i) A detailed description of the variance;

(ii) An explanation of how the variance achieves a level of control sufficient to accomplish the purpose of the standard it is to replace; and

(iii) Evidence that the Tribal gaming regulatory authority has approved the variance.

(3) In the event that the Tribal gaming regulatory authority or the Tribe chooses to submit a variance request directly to the Commission, it may do so without the approval requirement set forth in paragraph (a)(2)(iii) of this section.

(b) *Commission concurrence.* (1) Following receipt of the variance approval, the Commission shall have 90 days to concur with or object to the approval of the variance.

(2) Any objection raised by the Commission shall be in the form of a written explanation based upon the following criteria:

(i) There is no valid explanation of why the gaming operation should have received a variance approval from the Tribal gaming regulatory authority on the enumerated standard; or

(ii) The variance as approved by the Tribal gaming regulatory authority does not provide a level of control sufficient to accomplish the purpose of the standard it is to replace.

(3) If the Commission fails to object in writing within 90 days after the date of receipt of a complete submission, the variance shall be considered concurred with by the Commission.

(4) The 90-day deadline may be extended, provided such extension is mutually agreed upon by the Tribal gaming regulatory authority and the Commission.

(c) *Curing Commission objections.* (1) Following an objection by the Commission to the issuance of a variance, the Tribal gaming regulatory authority shall have the opportunity to cure any objections noted by the Commission.

(2) A Tribal gaming regulatory authority may cure the objections raised by the Commission by:

(i) Rescinding its initial approval of the variance; or

(ii) Amending its initial approval and re-submitting it to the Commission.

(3) Upon any re-submission of a variance approval, the Commission shall have 30 days to concur with or object to the re-submitted variance.

(4) If the Commission fails to object in writing within 30 days after the date of receipt of the re-submitted variance, the re-submitted variance shall be considered concurred with by the Commission.

(d) *Appeals.* (1) Upon receipt of objections to a re-submission of a variance, the Tribal gaming regulatory authority shall be entitled to an appeal before the full Commission in accordance with the following process:

(i) Within 30 days of receiving an objection to a re-submission, the Tribal gaming regulatory authority shall file its notice of appeal.

(ii) Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal.

(iii) An appeal under this section shall specify the reasons why the Tribal gaming regulatory authority believes the Commission's objections should be reviewed, and shall include supporting documentation, if any.

(iv) Within 30 days after receipt of the appeal, the Commission shall render a decision unless the appellant elects to provide the Commission additional time, not to exceed an additional 30 days, to render a decision.

(v) In the absence of a decision within the time provided, the Tribal gaming regulatory authority's re-submission shall be considered concurred with by the Commission and become effective.

(2) [Reserved]

(e) *Effective date of variance.* The gaming operation shall comply with standards that achieve a level of control sufficient to accomplish the purpose of the standard it is to replace until such time as the Commission objects to the Tribal gaming regulatory authority's approval of a variance as provided in paragraph (b) of this section.

Tier A Gaming Operations

§ 542.20 What is a Tier A gaming operation?

A Tier A gaming operation is one with annual gross gaming revenues of more

than $1 million but not more than $5 million.

§ 542.21 What are the minimum internal control standards for drop and count for Tier A gaming operations?

(a) *Table game drop standards.* (1) The setting out of empty table game drop boxes and the drop shall be a continuous process.

(2) At the end of each shift:

(i) All locked table game drop boxes shall be removed from the tables by an individual independent of the pit shift being dropped;

(ii) A separate drop box shall be placed on each table opened at any time during each shift or a gaming operation may utilize a single drop box with separate openings and compartments for each shift; and

(iii) Upon removal from the tables, table game drop boxes shall be transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(3) If drop boxes are not placed on all tables, then the pit department shall document which tables were open during the shift.

(4) The transporting of table game drop boxes shall be performed by a minimum of two individuals, at least one of whom is independent of the pit shift being dropped.

(5) All table game drop boxes shall be posted with a number corresponding to a permanent number on the gaming table and marked to indicate game, table number, and shift.

(b) *Soft count room personnel.* (1) The table game soft count and the gaming machine bill acceptor count shall be performed by a minimum of two employees.

(2) Count room personnel shall not be allowed to exit or enter the count room during the count except for emergencies or scheduled breaks. At no time during the count, shall there be fewer than two employees in the count room until the drop proceeds have been accepted into cage/vault accountability.

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same two individuals more than four days per week. This standard shall not apply to gaming operations that utilize a count team of more than two individuals.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, however, a dealer or a cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all soft count documentation.

(c) *Table game soft count standards.* (1) The table game soft count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The table game drop boxes shall be individually emptied and counted in such a manner to prevent the commingling of funds between boxes until the count of the box has been recorded.

(i) The count of each box shall be recorded in ink or other permanent form of recordation.

(ii) A second count shall be performed by an employee on the count team who did not perform the initial count.

(iii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(5) If cash counters are utilized and the count room table is used only to empty boxes and sort/stack contents, a count team member shall be able to observe the loading and unloading of all cash at the cash counter, including rejected cash.

(6) Table game drop boxes, when empty, shall be shown to another member of the count team, or to another person who is observing the count, or to surveillance.

(7) Orders for fill/credit (if applicable) shall be matched to the fill/credit slips. Fills and credits shall be traced to or recorded on the count sheet.

(8) Pit marker issue and payment slips (if applicable) removed from the table game drop boxes shall either be:

(i) Traced to or recorded on the count sheet by the count team; or

(ii) Totaled by shift and traced to the totals documented by the computerized system. Accounting personnel shall verify the issue/payment slip for each table is accurate.

(9) Foreign currency exchange forms (if applicable) removed from the table game drop boxes shall be reviewed for the proper daily exchange rate and the conversion amount shall be recomputed by the count team. Alternatively, this may be performed by accounting/auditing employees.

(10) The opening/closing table and marker inventory forms (if applicable) shall either be:

(i) Examined and traced to or recorded on the count sheet; or

(ii) If a computerized system is used, accounting personnel can trace the opening/closing table and marker inventory forms to the count sheet. Discrepancies shall be investigated with the findings documented and maintained for inspection.

(11) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(12) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(13) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such individual shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(14) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or someone other than the cashiers department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(15) Access to stored, full table game drop boxes shall be restricted to authorized members of the drop and count teams.

(16) All table game drop boxes shall be posted with a number corresponding to a permanent number on the gaming table and marked to indicate game, table number, and shift.

(d) *Gaming machine bill acceptor drop standards.* (1) A minimum of two employees shall be involved in the removal of the gaming machine drop, at least one of whom is independent of the gaming machine department.

(2) All bill acceptor canisters shall be removed only at the time previously designated by the gaming operation and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) The bill acceptor canisters shall be removed by an individual independent of the gaming machine department then

transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(i) Security shall be provided over the bill acceptor canisters removed from the gaming machines and awaiting transport to the count room.

(ii) The transporting of bill acceptor canisters shall be performed by a minimum of two individuals, at least one of whom is independent of the gaming machine department.

(4) All bill acceptor canisters shall be posted with a number corresponding to a permanent number on the gaming machine.

(e) *Gaming machine bill acceptor count standards.* (1) The gaming machine bill acceptor count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The bill acceptor canisters shall be individually emptied and counted in such a manner to prevent the commingling of funds between canisters until the count of the canister has been recorded.

(i) The count of each canister shall be recorded in ink or other permanent form of recordation.

(ii) A second count shall be performed by an employee on the count team who did not perform the initial count.

(iii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(5) If cash counters are utilized and the count room table is used only to empty canisters and sort/stack contents, a count team member shall be able to observe the loading and unloading of all cash at the cash counter, including rejected cash.

(6) Canisters, when empty, shall be shown to another member of the count team, or to another person who is observing the count, or to surveillance.

(7) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(8) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(9) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such individual shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(10) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or someone other than the cashiers department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(11) Access to stored bill acceptor canisters, full or empty, shall be restricted to authorized members of the drop and count teams.

(12) All bill acceptor canisters shall be posted with a number corresponding to a permanent number on the gaming machine.

(f) *Gaming machine coin drop standards.* (1) A minimum of two employees shall be involved in the removal of the gaming machine drop, at least one of whom is independent of the gaming machine department.

(2) All drop buckets shall be removed only at the time previously designated by the gaming operation and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) Security shall be provided over the buckets removed from the gaming machine drop cabinets and awaiting transport to the count room.

(4) As each machine is opened, the contents shall be tagged with its respective machine number if the bucket is not permanently marked with the machine number. The contents shall be transported directly to the area designated for the counting of such drop proceeds. If more than one trip is required to remove the contents of the machines, the filled carts of coins shall be securely locked in the room designed for counting or in another equivalently secure area with comparable controls. There shall be a locked covering on any carts in which the drop route includes passage out of doors.

(i) Alternatively, a smart bucket system that electronically identifies and tracks the gaming machine number, and facilitates the proper recognition of gaming revenue, shall satisfy the requirements of this paragraph.

(ii) [Reserved]

(5) Each drop bucket in use shall be:

(i) Housed in a locked compartment separate from any other compartment of the gaming machine and keyed differently than other gaming machine compartments; and

(ii) Identifiable to the gaming machine from which it is removed. If the gaming machine is identified with a removable tag that is placed in the bucket, the tag shall be placed on top of the bucket when it is collected.

(6) Each gaming machine shall have drop buckets into which coins or tokens that are retained by the gaming machine are collected. Drop bucket contents shall not be used to make change or pay hand-paid payouts.

(7) The collection procedures may include procedures for dropping gaming machines that have trays instead of drop buckets.

(g) *Hard count room personnel.* (1) The weigh/count shall be performed by a minimum of two employees.

(2) At no time during the weigh/count shall there be fewer than two employees in the count room until the drop proceeds have been accepted into cage/vault accountability.

(i) If the gaming machine count is conducted with a continuous mechanical count meter which is not reset during the count and is verified in writing by at least two employees at the start and end of each denomination count, then one employee may perform the wrap.

(ii) [Reserved]

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same two individuals more than four days per week. This standard shall not apply to gaming operations that utilize a count team of more than two individuals.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, unless they are non-supervisory gaming machine employees and perform the laborer function only (A non-supervisory gaming machine employee is defined as a person below the level of gaming machine shift supervisor). A cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all count documentation.

(h) *Gaming machine coin count and wrap standards.* (1) Coins shall include tokens.

(2) The gaming machine coin count and wrap shall be performed in a count room or other equivalently secure area with comparable controls.

(i) Alternatively, an on-the-floor drop system utilizing a mobile scale shall satisfy the requirements of this paragraph, subject to the following conditions:

(A) The gaming operation shall utilize and maintain an effective on-line gaming machine monitoring system, as described in § 542.12(r)(3);

(B) Surveillance shall be notified when the weigh/drop/count begins and shall be capable of monitoring the entire process;

(C) An independent observer shall remain by the weigh scale at all times and shall observe the entire weigh/drop/count process;

(D) Physical custody of the keys needed to access the laptop and video compartment shall require the involvement of two persons, one of whom is independent of the drop and count team;

(E) The mule key, the laptop and video compartment keys, and the remote control for the VCR shall be maintained by a department independent of the gaming machine department. The appropriate personnel shall sign out these keys;

(F) An independent person shall be required to accompany these keys while they are checked out, and observe each time the laptop compartment is opened;

(G) The laptop access panel shall not be opened outside the hard count room, except in instances when the laptop must be rebooted as a result of a crash, lock up, or other situation requiring immediate corrective action;

(H) User access to the system shall be limited to those employees required to have full or limited access to complete the weigh/drop/count;

(I) Prior to the drop, the drop/count team shall ensure the scale batteries are charged;

(J) Prior to the drop, a videotape shall be inserted into the VCR on board the mule and the VCR shall be activated;

(K) The weigh scale test shall be performed prior to removing the unit from the hard count room for the start of the weigh/drop/count;

(L) When the weigh/drop/count is completed, the independent observer shall access the laptop compartment, end the recording session, eject the videotape, and deliver the videotape to surveillance; and

(M) The gaming operation must obtain the security camera available with the system, and this camera must be added in such a way as to eliminate tampering.

(ii) [Reserved]

(3) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(4) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(5) The following functions shall be performed in the counting of the gaming machine drop:

(i) Recorder function, which involves the recording of the gaming machine count; and

(ii) Count team supervisor function, which involves the control of the gaming machine weigh and wrap process. The supervisor is precluded from performing the initial recording of the weigh/count unless a weigh scale with a printer is used.

(6) The gaming machine drop shall be counted, wrapped, and reconciled in such a manner to prevent the commingling of gaming machine drop coin with coin (for each denomination) from the next gaming machine drop until the count of the gaming machine drop has been recorded. If the coins are not wrapped immediately after being weighed or counted, they shall be secured and not commingled with other coin.

(i) The amount of the gaming machine drop from each machine shall be recorded in ink or other permanent form of recordation on a gaming machine count document by the recorder or mechanically printed by the weigh scale.

(ii) Corrections to information originally recorded by the count team on gaming machine count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(A) If a weigh scale interface is used, corrections to gaming machine count data shall be made using either of the following:

(*1*) Crossing out the error on the gaming machine document, entering the correct figure, and then obtaining the initials of at least two count team employees. If this procedure is used, an employee independent of the gaming machine department and count team shall enter the correct figure into the computer system prior to the generation of related gaming machine reports; or

(*2*) During the count process, correct the error in the computer system and enter the passwords of at least two count team employees. If this procedure is used, an exception report shall be generated by the computer system identifying the gaming machine number, the error, the correction, and the count team employees attesting to the correction.

(B) [Reserved]

(7) If applicable, the weight shall be converted to dollar amounts prior to the reconciliation of the weigh to the wrap.

(8) If a coin meter is used, a count team member shall convert the coin count for each denomination into dollars and shall enter the results on a summary sheet.

(9) The recorder and at least one other count team member shall sign the weigh tape and the gaming machine count document attesting to the accuracy of the weigh/count.

(10) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(11) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such individual shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(12) All gaming machine count and wrap documentation, including any applicable computer storage media, shall be delivered to the accounting department by a count team member or someone other than the cashier's department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(13) If the coins are transported off the property, a second (alternative) count procedure shall be performed before the coins leave the property. Any variances shall be documented.

(14) *Variances.* Large (by denomination, either $1,000 or 2% of the drop, whichever is less) or unusual (e.g., zero for weigh/count or patterned for all counts) variances between the weigh/count and wrap shall be investigated by management personnel independent of the gaming machine department, count team, and the cage/vault functions on a timely basis. The results of such investigation shall be documented and maintained.

(u) *Security of the coin room inventory during the gaming machine coin count and wrap.* (1) If the count room serves as a coin room and coin room inventory is not secured so as to preclude access

by the count team, then the following standards shall apply:

(i) At the commencement of the gaming machine count the following requirements shall be met:

(A) The coin room inventory shall be counted by at least two employees, one of whom is a member of the count team and the other is independent of the weigh/count and wrap procedures;

(B) The count in paragraph (i)(1)(i)(A) of this section shall be recorded on an appropriate inventory form;

(ii) Upon completion of the wrap of the gaming machine drop:

(A) At least two members of the count team (wrap team), independently from each other, shall count the ending coin room inventory;

(B) The counts in paragraph (i)(1)(ii)(A) of this section shall be recorded on a summary report(s) which evidences the calculation of the final wrap by subtracting the beginning inventory from the sum of the ending inventory and transfers in and out of the coin room;

(C) The same count team members shall compare the calculated wrap to the weigh/count, recording the comparison and noting any variances on the summary report;

(D) A member of the cage/vault department shall count the ending coin room inventory by denomination and shall reconcile it to the beginning inventory, wrap, transfers, and weigh/count; and

(E) At the conclusion of the reconciliation, at least two count/wrap team members and the verifying employee shall sign the summary report(s) attesting to its accuracy.

(iii) The functions described in paragraph (i)(1)(ii)(A) and (C) of this section may be performed by only one count team member. That count team member must then sign the summary report, along with the verifying employee, as required under paragraph (i)(1)(ii)(E).

(2) If the count room is segregated from the coin room, or if the coin room is used as a count room and the coin room inventory is secured to preclude access by the count team, all of the following requirements shall be completed, at the conclusion of the count:

(i) At least two members of the count/wrap team shall count the final wrapped gaming machine drop independently from each other;

(ii) The counts shall be recorded on a summary report;

(iii) The same count team members (or the accounting department) shall compare the final wrap to the weigh/count, recording the comparison, and noting any variances on the summary report;

(iv) A member of the cage/vault department shall count the wrapped gaming machine drop by denomination and reconcile it to the weigh/count;

(v) At the conclusion of the reconciliation, at least two count team members and the cage/vault employee shall sign the summary report attesting to its accuracy; and

(vi) The wrapped coins (exclusive of proper transfers) shall be transported to the cage, vault or coin vault after the reconciliation of the weigh/count to the wrap.

(j) *Transfers during the gaming machine coin count and wrap.* (1) Subject to the approval of the Tribal gaming regulatory authority, transfers may be permitted during the count and wrap.

(2) Each transfer shall be recorded on a separate multi-part form with a preprinted or concurrently-printed form number (used solely for gaming machine count transfers) which shall be subsequently reconciled by the accounting department to ensure the accuracy of the reconciled gaming machine drop.

(3) Each transfer must be counted and signed for by at least two members of the count team and by someone independent of the count team who is responsible for authorizing the transfer.

(k) *Gaming machine drop key control standards.* (1) Gaming machine coin drop cabinet keys, including duplicates, shall be maintained by a department independent of the gaming machine department.

(2) The physical custody of the keys needed to access gaming machine coin drop cabinets, including duplicates, shall require the involvement of two persons, one of whom is independent of the gaming machine department.

(3) Two employees (separate from key custodian) shall be required to accompany such keys while checked out and observe each time gaming machine drop cabinets are accessed.

(l) *Table game drop box and bill acceptor canister key control standards.*

(1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority adopts and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(2) Procedures shall be developed and implemented to insure that unauthorized access to empty table game drop boxes shall not occur from the time the boxes leave the storage racks until they are placed on the tables.

(3) The involvement of at least two individuals independent of the cage department shall be required to access stored empty table game drop boxes.

(4) The release keys shall be separately keyed from the contents keys.

(5) At least two count team members are required to be present at the time count room and other count keys are issued for the count.

(6) All duplicate keys shall be maintained in a manner that provides the same degree of control as is required for the original keys. Records shall be maintained for each key duplicated that indicate the number of keys made and destroyed.

(7) Logs shall be maintained by the custodian of sensitive keys to document authorization of personnel accessing keys.

(m) *Table game drop box release keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority adopts and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(i) The table game drop box release keys shall be maintained by a department independent of the pit department.

(ii) Only the person(s) authorized to remove table game drop boxes from the tables shall be allowed access to the table game drop box release keys; however, the count team members may have access to the release keys during the soft count in order to reset the table game drop boxes.

(iii) Persons authorized to remove the table game drop boxes shall be precluded from having simultaneous access to the table game drop box contents keys and release keys.

(iv) For situations requiring access to a table game drop box at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(2) [Reserved]

(n) *Bill acceptor canister release keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority adopts and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(i) The bill acceptor canister release keys shall be maintained by a department independent of the gaming machine department.

(ii) Only the person(s) authorized to remove bill acceptor canisters from the gaming machines shall be allowed access to the release keys.

(iii) Persons authorized to remove the bill acceptor canisters shall be precluded from having simultaneous access to the bill acceptor canister contents keys and release keys.

(iv) For situations requiring access to a bill acceptor canister at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(2) [Reserved]

(o) *Table game drop box storage rack keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority adopts and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(2) Persons authorized to obtain table game drop box storage rack keys shall be precluded from having simultaneous access to table game drop box contents keys, with the exception of the count team.

(p) *Bill acceptor canister storage rack keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority adopts and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(2) Persons authorized to obtain bill acceptor canister storage rack keys shall be precluded from having simultaneous access to bill acceptor canister contents keys, with the exception of the count team.

(q) *Table game drop box contents keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority adopts and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(i) The physical custody of the keys needed for accessing stored, full table game drop box contents shall require the involvement of persons from at least two separate departments, with the exception of the count team.

(ii) Access to the table game drop box contents key at other than scheduled count times shall require the involvement of at least two persons from separate departments, including management. The reason for access shall be documented with the signatures of all participants and observers.

(iii) Only count team members shall be allowed access to table game drop box contents keys during the count process.

(2) [Reserved]

(r) *Bill acceptor canister contents keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority adopts and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(i) The physical custody of the keys needed for accessing stored, full bill acceptor canister contents shall require involvement of persons from two separate departments, with the exception of the count team.

(ii) Access to the bill acceptor canister contents key at other than scheduled count times shall require the involvement of at least two persons from separate departments, including management. The reason for access shall be documented with the signatures of all participants and observers.

(iii) Only the count team members shall be allowed access to bill acceptor canister contents keys during the count process.

(2) [Reserved]

(s) *Emergency drop procedures.* Emergency drop procedures shall be developed by the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority.

(t) *Equipment standards for gaming machine count.* (1) A weigh scale calibration module shall be secured so as to prevent unauthorized access (e.g., prenumbered seal, lock and key, etc.).

(2) Someone independent of the cage, vault, gaming machine, and count team functions shall be required to be present whenever the calibration module is accessed. Such access shall be documented and maintained.

(3) If a weigh scale interface is used, it shall be adequately restricted so as to prevent unauthorized access (passwords, keys, etc.).

(4) If the weigh scale has a zero adjustment mechanism, it shall be physically limited to minor adjustments (e.g., weight of a bucket) or physically situated such that any unnecessary adjustments to it during the weigh process would be observed by other count team members.

(5) The weigh scale and weigh scale interface (if applicable) shall be tested by someone who is independent of the cage, vault, and gaming machine departments and count team at least quarterly. At least annually, this test shall be performed by internal audit in accordance with the internal audit standards. The result of these tests shall be documented and signed by the person(s) performing the test.

(6) Prior to the gaming machine count, at least two employees shall verify the accuracy of the weigh scale with varying weights or with varying amounts of previously counted coin for each denomination to ensure the scale is properly calibrated (varying weights/coin from drop to drop is acceptable).

(7) If a mechanical coin counter is used (instead of a weigh scale), the Tribal gaming regulatory authority or the gaming operation shall establish, and the gaming operation shall comply, with procedures that are equivalent to those described in paragraphs (t)(4), (t)(5), and (t)(6) of this section. Such procedures shall be subject to the approval of the Tribal gaming regulatory authority.

(8) If a coin meter count machine is used, the count team member shall record the machine number denomination and number of coins in ink on a source document, unless the meter machine automatically records such information.

(i) A count team member shall test the coin meter count machine prior to the actual count to ascertain if the metering device is functioning properly with a predetermined number of coins for each denomination.

(ii) [Reserved]

§ 542.22 What are the minimum internal control standards for internal audit for Tier A gaming operations?

(a) *Internal audit personnel.* (1) For Tier A gaming operations, a separate internal audit department must be maintained. Alternatively, designating personnel (who are independent with respect to the departments/procedures being examined) to perform internal audit work satisfies the requirements of this paragraph.

(2) The internal audit personnel shall report directly to the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe in accordance with the definition of internal audit in § 542.2.

(b) Audits. (1) Internal audit personnel shall perform audits of all major gaming areas of the gaming operation. The following are reviewed at least annually:

(i) Bingo, including but not limited to, bingo card control, payout procedures, and cash reconciliation process;

(ii) Pull tabs, including but not limited to, statistical records, winner verification, perpetual inventory, and accountability of sales versus inventory;

(iii) Card games, including but not limited to, card games operation, cash exchange procedures, shill transactions, and count procedures;

(iv) Keno, including but not limited to, game write and payout procedures, sensitive key location and control, and a review of keno auditing procedures;

(v) Pari-mutual wagering, including write and payout procedures, and pari-mutual auditing procedures;

(vi) Table games, including but not limited to, fill and credit procedures, pit credit play procedures, rim credit procedures, soft drop/count procedures and the subsequent transfer of funds, unannounced testing of count room currency counters and/or currency interface, location and control over sensitive keys, the tracing of source documents to summarized documentation and accounting records, and reconciliation to restricted copies;

(vii) Gaming machines, including but not limited to, jackpot payout and gaming machine fill procedures, gaming machine drop/count and bill acceptor drop/count and subsequent transfer of funds, surprise testing of weigh scale and weigh scale interface, unannounced testing of count room currency counters and/or currency interface, gaming machine drop cabinet access, tracing of source documents to summarized documentation and accounting records, reconciliation to restricted copies, location and control over sensitive keys, compliance with EPROM duplication procedures, and compliance with MICS procedures for gaming machines that accept currency or coins and issue cash-out tickets or gaming machines that do not accept currency or coin and do not return currency or coin;

(viii) Cage and credit procedures including all cage, credit, and collection procedures, and the reconciliation of trial balances to physical instruments on a sample basis. Cage accountability shall be reconciled to the general ledger;

(ix) Information technology functions, including review for compliance with information technology standards;

(x) Complimentary service or item, including but not limited to, procedures whereby complimentary service items are issued, authorized, and redeemed; and

(xi) Any other internal audits as required by the Tribal gaming regulatory authority.

(2) In addition to the observation and examinations performed under paragraph (b)(1) of this section, follow-up observations and examinations shall be performed to verify that corrective action has been taken regarding all instances of noncompliance cited by internal audit, the independent accountant, and/or the Commission. The verification shall be performed within six months following the date of notification.

(3) Whenever possible, internal audit observations shall be performed on an unannounced basis (i.e., without the employees being forewarned that their activities will be observed). Additionally, if the independent accountant also performs the internal audit function, the accountant shall perform separate observations of the table games/gaming machine drops and counts to satisfy the internal audit observation requirements and independent accountant tests of controls as required by the American Institute of Certified Public Accountants guide.

(c) *Documentation.* (1) Documentation (e.g., checklists, programs, reports, etc.) shall be prepared to evidence all internal audit work performed as it relates to the requirements in this section, including all instances of non-compliance.

(2) The internal audit department shall operate with audit programs, which, at a minimum, address the MICS. Additionally, the department shall properly document the work performed, the conclusions reached, and the resolution of all exceptions. Institute of Internal Auditors standards are recommended but not required.

(d) *Reports.* (1) Reports documenting audits performed shall be maintained and made available to the Commission upon request. The audit reports shall include the following information:

(i) Audit objectives;

(ii) Audit procedures and scope;

(iii) Findings and conclusions;

(iv) Recommendations, if applicable; and

(v) Management's response.

(2) [Reserved]

(e) *Material exceptions.* All material exceptions resulting from internal audit work shall be investigated and resolved with the results of such being documented and retained for five years.

(f) *Role of management.* (1) Internal audit findings shall be reported to management.

(2) Management shall be required to respond to internal audit findings stating corrective measures to be taken to avoid recurrence of the audit exception. Such management responses shall be included in the internal audit report that will be delivered to management and the Tribal gaming regulatory authority.

§ 542.23 What are the minimum internal control standards for surveillance for Tier A gaming operations?

(a) Tier A gaming operations must, at a minimum, maintain and operate an unstaffed surveillance system in a secured location whereby the areas under surveillance are continually recorded.

(b) The entrance to the secured location shall be located so that it is not readily accessible by either gaming operation employees who work primarily on the casino floor, or the general public.

(c) Access to the secured location shall be limited to surveillance personnel, designated employees, and other persons authorized in accordance with the surveillance department policy. Such policy shall be subject to the approval of the Tribal gaming regulatory authority.

(d) The surveillance system shall include date and time generators which possess the capability to display the date and time of recorded events on video and/or digital recordings. The displayed date and time shall not significantly obstruct the recorded view.

(e) The surveillance department shall strive to ensure staff is trained in the use of the equipment, knowledge of the games, and house rules.

(f) Each camera required by the standards in this section shall be installed in a manner that will prevent it from being readily obstructed, tampered with, or disabled by patrons or employees.

(g) Each camera required by the standards in this section shall possess the capability of having its picture recorded. The surveillance system shall include sufficient numbers of recorders to simultaneously record multiple gaming and count room activities, and record the views of all dedicated cameras and motion activated dedicated cameras.

(h) Reasonable effort shall be made to repair each malfunction of surveillance system equipment required by the standards in this section within seventy-two (72) hours after the malfunction is discovered.

(1) In the event of a dedicated camera malfunction, the gaming operation or the surveillance department shall, upon identification of the malfunction, provide alternative camera coverage or other security measures, such as additional supervisory or security personnel, to protect the subject activity.

(2) [Reserved]

(i) *Bingo.* The surveillance system shall record the bingo ball drawing device, the game board, and the activities of the employees responsible for drawing, calling, and entering the balls drawn or numbers selected.

(j) *Card games.* The surveillance system shall record the general activities in each card room and be capable of identifying the employees performing the different functions.

(k) *Keno.* The surveillance system shall record the keno ball drawing device, the general activities in each keno game area, and be capable of identifying the employees performing the different functions.

(l) *Table games.* (1) *Operations with four (4) or more table games.* Except as otherwise provided in paragraphs (l)(3), (4), and (5) of this section, the surveillance system of gaming operations operating four (4) or more table games shall provide at a minimum one (1) pan-tilt-zoom camera per two (2) tables and surveillance must be capable of taping:

(i) With sufficient clarity to identify patrons and dealers; and

(ii) With sufficient coverage and clarity to simultaneously view the table bank and determine the configuration of wagers, card values, and game outcome.

(iii) One (1) dedicated camera per table and one (1) pan-tilt-zoom camera per four (4) tables may be an acceptable alternative procedure to satisfy the requirements of this paragraph.

(2) *Operations with three (3) or fewer table games.* The surveillance system of gaming operations operating three (3) or fewer table games shall:

(i) Comply with the requirements of paragraph (l)(1) of this section; or

(ii) Have one (1) overhead camera at each table.

(3) *Craps.* All craps tables shall have two (2) dedicated cross view cameras covering both ends of the table.

(4) *Roulette.* All roulette areas shall have one (1) overhead dedicated camera covering the roulette wheel and shall also have one (1) dedicated camera covering the play of the table.

(5) *Big wheel.* All big wheel games shall have one (1) dedicated camera viewing the wheel.

(m) *Progressive table games.* (1) Each progressive table game with a progressive jackpot of $25,000 or more shall be recorded by dedicated cameras that provide coverage of:

(i) The table surface, sufficient that the card values and card suits can be clearly identified;

(ii) An overall view of the entire table with sufficient clarity to identify patrons and dealer; and

(iii) A view of the progressive meter jackpot amount. If several tables are linked to the same progressive jackpot meter, only one meter need be recorded.

(2) [Reserved]

(n) *Gaming machines.* (1) Except as otherwise provided in paragraphs (n)(2) and (3) of this section, each gaming machine offering a payout of more than $250,000 shall be monitored by a dedicated camera(s) to provide coverage of:

(i) All patrons and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(2) *In-house progressive machine.* Each in-house progressive gaming machine offering a base payout amount of more than $100,000 shall be monitored by a dedicated camera(s) to provide coverage of:

(i) All patrons and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(3) *Wide-area progressive machine.* Each wide-area progressive gaming machine offering a base payout amount of more than $1.5 million and monitored by an independent vendor utilizing an online progressive computer system shall be monitored by a dedicated camera(s) to provide coverage of:

(i) All patrons and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(4) Notwithstanding paragraph (n)(1) of this section, if the gaming machine is a multi-game machine, the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, may develop and implement alternative procedures to verify payouts.

(o) *Currency and coin.* The surveillance system shall record a general overview of all areas where currency or coin may be stored or counted.

(p) *Video recording and/or digital record retention.* All video recordings and/or digital records of coverage provided by the dedicated cameras or motion-activated dedicated cameras required by the standards in this section shall be retained for a minimum of seven (7) days.

(2) Recordings involving suspected or confirmed gaming crimes, unlawful activity, or detentions by security personnel, must be retained for a minimum of 30 days.

(3) Copies of video recordings and/or digital records shall be provided to the Commission upon request. If an original is requested, the Commission shall provide written receipt to the Tribal gaming regulatory authority.

(q) *Video library log.* A video library log, or comparable alternative procedure approved by the Tribal gaming regulatory authority, shall be maintained to demonstrate compliance with the storage, identification, and retention standards required in this section.

(r) *Malfunction and repair log.* Surveillance personnel shall maintain a log or alternative procedure approved by the Tribal gaming regulatory authority that documents each malfunction and repair of the surveillance system as defined in this section.

(2) The log shall state the time, date, and nature of each malfunction, the efforts expended to repair the malfunction, and the date of each effort, the reasons for any delays in repairing the malfunction, the date the malfunction is repaired, and where applicable, any alternative security measures that were taken.

Tier B Gaming Operations

§ 542.30 What is a Tier B gaming operation?

A Tier B gaming operation is one with gross gaming revenues of more than $5 million but not more than $15 million.

§ 542.31 What are the minimum internal control standards for drop and count for Tier B gaming operations?

(a) *Table game drop standards.* (1) The setting out of empty table game drop boxes and the drop shall be a continuous process.

(2) At the end of each shift:

(i) All locked table game drop boxes shall be removed from the tables by an individual independent of the pit shift being dropped;

(ii) A separate drop box shall be placed on each table opened at any time during each shift or a gaming operation may utilize a single drop box with separate openings and compartments for each shift; and

(iii) Upon removal from the tables, table game drop boxes shall be transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(3) If drop boxes are not placed on all tables, then the pit department shall document which tables were open during the shift.

(4) The transporting of table game drop boxes shall be performed by a minimum of two individuals, at least one of whom is independent of the pit shift being dropped.

(5) All table game drop boxes shall be posted with a number corresponding to a permanent number on the gaming table and marked to indicate game, table number, and shift.

(6) Surveillance shall be notified when the drop is to begin so that surveillance may monitor the activities.

(b) *Soft count room personnel.* (1) The table game soft count and the gaming machine bill acceptor count shall be performed by a minimum of two employees.

(i) The count shall be viewed live, or on video recording and/or digital record, within seven days by an employee independent of the count.

(ii) [Reserved]

(2) Count room personnel shall not be allowed to exit or enter the count room during the count except for emergencies or scheduled breaks. At no time during the count, shall there be fewer than two employees in the count room until the drop proceeds have been accepted into cage/vault accountability. Surveillance shall be notified whenever count room personnel exit or enter the count room during the count.

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same two individuals more than four days per week. This standard shall not apply to gaming operations that utilize a count team of more than two individuals.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, however, a dealer or a cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all soft count documentation.

(c) *Table game soft count standards.* (1) The table game soft count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The table game drop boxes shall be individually emptied and counted in such a manner to prevent the commingling of funds between boxes until the count of the box has been recorded.

(i) The count of each box shall be recorded in ink or other permanent form of recordation.

(ii) A second count shall be performed by an employee on the count team who did not perform the initial count.

(iii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(5) If currency counters are utilized and the count room table is used only to empty boxes and sort/stack contents, a count team member shall be able to observe the loading and unloading of all currency at the currency counter, including rejected currency.

(6) Table game drop boxes, when empty, shall be shown to another member of the count team, or to another person who is observing the count, or to surveillance, provided the count is monitored in its entirety by someone independent of the count.

(7) Orders for fill/credit (if applicable) shall be matched to the fill/credit slips. Fills and credits shall be traced to or recorded on the count sheet.

(8) Pit marker issue and payment slips (if applicable) removed from the table game drop boxes shall either be:

(i) Traced to or recorded on the count sheet by the count team; or

(ii) Totaled by shift and traced to the totals documented by the computerized system. Accounting personnel shall verify the issue/payment slip for each table is accurate.

(9) Foreign currency exchange forms (if applicable) removed from the table game drop boxes shall be reviewed for the proper daily exchange rate and the conversion amount shall be recomputed by the count team. Alternatively, this may be performed by accounting/auditing employees.

(10) The opening/closing table and marker inventory forms (if applicable) shall either be:

(i) Examined and traced to or recorded on the count sheet; or

(ii) If a computerized system is used, accounting personnel can trace the opening/closing table and marker inventory forms to the count sheet. Discrepancies shall be investigated with the findings documented and maintained for inspection.

(11) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(12) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(13) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such individual shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(14) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or someone other than the cashiers department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(15) Access to stored, full table game drop boxes shall be restricted to authorized members of the drop and count teams.

(16) All table game drop boxes shall be posted with a number corresponding to a permanent number on the gaming table and marked to indicate game, table number, and shift.

(d) *Gaming machine bill acceptor drop standards.* (1) A minimum of two employees shall be involved in the removal of the gaming machine drop, at least one of who is independent of the gaming machine department.

(2) All bill acceptor canisters shall be removed only at the time previously designated by the gaming operations and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) Surveillance shall be notified when the drop is to begin so that surveillance may monitor the activities.

(i) Surveillance shall record in a proper log or journal in a legible manner any exceptions or variations to established procedures observed during the drop. Such log or journal shall be made available for review to authorized persons only.

(ii) [Reserved]

(4) The bill acceptor canisters shall be removed by an individual independent of the gaming machine department then transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(i) Security shall be provided over the bill acceptor canisters removed from the gaming machines and awaiting transport to the count room.

(ii) The transporting of bill acceptor canisters shall be performed by a minimum of two individuals, at least one of who is independent of the gaming machine department.

(5) All bill acceptor canisters shall be posted with a number corresponding to a permanent number on the gaming machine.

(e) *Gaming machine bill acceptor count standards.* (1) The gaming machine bill acceptor count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers,

supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The bill acceptor canisters shall be individually emptied and counted in such a manner to prevent the commingling of funds between canisters until the count of the canister has been recorded.

(i) The count of each canister shall be recorded in ink or other permanent form of recordation.

(ii) A second count shall be performed by an employee on the count team who did not perform the initial count.

(iii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(5) If currency counters are utilized and the count room table is used only to empty canisters and sort/stack contents, a count team member shall be able to observe the loading and unloading of all currency at the currency counter, including rejected currency.

(6) Canisters, when empty, shall be shown to another member of the count team, to another person who is observing the count, or to surveillance, provided that the count is monitored in its entirety by someone independent of the count.

(7) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(8) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(9) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such individual shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(10) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or someone other than the cashiers department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(11) Access to stored bill acceptor canisters, full or empty, shall be restricted to authorized members of the drop and count teams.

(12) All bill acceptor canisters shall be posted with a number corresponding to a permanent number on the gaming machine.

(f) *Gaming machine coin drop standards.* (1) A minimum of two employees shall be involved in the removal of the gaming machine drop, at least one of who is independent of the gaming machine department.

(2) All drop buckets shall be removed only at the time previously designated by the gaming operation and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) Surveillance shall be notified when the drop is to begin in order that surveillance may monitor the activities.

(i) Surveillance shall record in a proper log or journal in a legible manner any exceptions or variations to established procedures observed during the drop. Such log or journal shall be made available for review to authorized persons only.

(ii) [Reserved]

(4) Security shall be provided over the buckets removed from the gaming machine drop cabinets and awaiting transport to the count room.

(5) As each machine is opened, the contents shall be tagged with its respective machine number if the bucket is not permanently marked with the machine number. The contents shall be transported directly to the area designated for the counting of such drop proceeds. If more than one trip is required to remove the contents of the machines, the filled carts of coins shall be securely locked in the room designed for counting or in another equivalently secure area with comparable controls. There shall be a locked covering on any carts in which the drop route includes passage out of doors.

(i) Alternatively, a smart bucket system that electronically identifies and tracks the gaming machine number, and facilitates the proper recognition of gaming revenue, shall satisfy the requirements of this paragraph.

(ii) [Reserved]

(6) Each drop bucket in use shall be:

(i) Housed in a locked compartment separate from any other compartment of the gaming machine and keyed differently than other gaming machine compartments; and

(ii) Identifiable to the gaming machine from which it is removed. If the gaming machine is identified with a removable tag that is placed in the bucket, the tag shall be placed on top of the bucket when it is collected.

(7) Each gaming machine shall have drop buckets into which coins or tokens that are retained by the gaming machine are collected. Drop bucket contents shall not be used to make change or pay hand-paid payouts.

(8) The collection procedures may include procedures for dropping gaming machines that have trays instead of drop buckets.

(g) *Hard count room personnel.* (1) The weigh/count shall be performed by a minimum of two employees.

(i) The count shall be viewed either live, or on video recording and/or digital record within 7 days by an employee independent of the count.

(ii) [Reserved]

(2) At no time during the weigh/count shall there be fewer than two employees in the count room until the drop proceeds have been accepted into cage/vault accountability. Surveillance shall be notified whenever count room personnel exit or enter the count room during the count.

(i) If the gaming machine count is conducted with a continuous mechanical count meter which is not reset during the count and is verified in writing by at least two employees at the start and end of each denomination count, then one employee may perform the wrap.

(ii) [Reserved]

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same two individuals more than 4 days per week. This standard shall not apply to gaming operations that utilize a count team of more than two individuals.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, unless they are non-supervisory gaming machine employees and perform the laborer function only (A non-supervisory gaming machine employee is defined as a person below the level of gaming machine shift supervisor). A cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all count documentation.

(h) *Gaming machine coin count and wrap standards.* (1) Coins shall include tokens.

(2) The gaming machine coin count and wrap shall be performed in a count room or other equivalently secure area with comparable controls.

(i) Alternatively, an on-the-floor drop system utilizing a mobile scale shall satisfy the requirements of this paragraph, subject to the following conditions:

(A) The gaming operation shall utilize and maintain an effective on-line gaming machine monitoring system, as described in § 542.12(r)(3);

(B) Surveillance shall be notified when the weigh/drop/count begins and shall be capable of monitoring the entire process;

(C) An independent observer shall remain by the weigh scale at all times and shall observe the entire weigh/drop/count process;

(D) Physical custody of the keys needed to access the laptop and video compartment shall require the involvement of two persons, one of whom is independent of the drop and count team;

(E) The mule key, the laptop and video compartment keys, and the remote control for the VCR shall be maintained by a department independent of the gaming machine department. The appropriate personnel shall sign out these keys;

(F) An independent person shall be required to accompany these keys while they are checked out, and observe each time the laptop compartment is opened;

(G) The laptop access panel shall not be opened outside the hard count room, except in instances when the laptop must be rebooted as a result of a crash, lock up, or other situation requiring immediate corrective action;

(H) User access to the system shall be limited to those employees required to have full or limited access to complete the weigh/drop/count;

(I) Prior to the drop, the drop/count team shall ensure the scale batteries are charged;

(J) Prior to the drop, a videotape shall be inserted into the VCR on board the mule and the VCR shall be activated;

(K) The weigh scale test shall be performed prior to removing the unit from the hard count room for the start of the weigh/drop/count;

(L) When the weigh/drop/count is completed, the independent observer shall access the laptop compartment, end the recording session, eject the videotape, and deliver the videotape to surveillance; and

(M) The gaming operation must obtain the security camera available with the system, and this camera must be added in such a way as to eliminate tampering.

(ii) [Reserved]

(3) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(4) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(5) The following functions shall be performed in the counting of the gaming machine drop:

(i) Recorder function, which involves the recording of the gaming machine count; and

(ii) Count team supervisor function, which involves the control of the gaming machine weigh and wrap process. The supervisor is precluded from performing the initial recording of the weigh/count unless a weigh scale with a printer is used.

(6) The gaming machine drop shall be counted, wrapped, and reconciled in such a manner to prevent the commingling of gaming machine drop coin with coin (for each denomination) from the next gaming machine drop until the count of the gaming machine drop has been recorded. If the coins are not wrapped immediately after being weighed or counted, they shall be secured and not commingled with other coin.

(i) The amount of the gaming machine drop from each machine shall be recorded in ink or other permanent form of recordation on a gaming machine count document by the recorder or mechanically printed by the weigh scale.

(ii) Corrections to information originally recorded by the count team on gaming machine count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(A) If a weigh scale interface is used, corrections to gaming machine count data shall be made using either of the following:

(*1*) Crossing out the error on the gaming machine document, entering the correct figure, and then obtaining the initials of at least two count team employees. If this procedure is used, an employee independent of the gaming machine department and count team shall enter the correct figure into the computer system prior to the generation of related gaming machine reports; or

(*2*) During the count process, correct the error in the computer system and enter the passwords of at least two count team employees. If this procedure is used, an exception report shall be generated by the computer system identifying the gaming machine number, the error, the correction, and the count team employees attesting to the correction.

(B) [Reserved]

(7) If applicable, the weight shall be converted to dollar amounts before the reconciliation of the weigh to the wrap.

(8) If a coin meter is used, a count team member shall convert the coin count for each denomination into dollars and shall enter the results on a summary sheet.

(9) The recorder and at least one other count team member shall sign the weigh tape and the gaming machine count document attesting to the accuracy of the weigh/count.

(10) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(11) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such individual shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(12) All gaming machine count and wrap documentation, including any applicable computer storage media, shall be delivered to the accounting department by a count team member or someone other than the cashier's department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(13) If the coins are transported off the property, a second (alternative) count procedure shall be performed before the coins leave the property. Any variances shall be documented.

(14) *Variances.* Large (by denomination, either $1,000 or 2% of the drop, whichever is less) or unusual (e.g., zero for weigh/count or patterned for all counts) variances between the weigh/count and wrap shall be investigated by management personnel independent of the gaming machine department, count team, and the cage/vault functions on a timely basis. The results of such investigation shall be documented and maintained.

(i) *Security of the coin room inventory during the gaming machine coin count and wrap.*

(1) If the count room serves as a coin room and coin room inventory is not secured so as to preclude access by the count team, then the following standards shall apply:

(i) At the commencement of the gaming machine count the following requirements shall be met:

(A) The coin room inventory shall be counted by at least two employees, one of whom is a member of the count team and the other is independent of the weigh/count and wrap procedures;

(B) The count in paragraph (i)(1)(i)(A) of this section shall be recorded on an appropriate inventory form;

(ii) Upon completion of the wrap of the gaming machine drop:

(A) At least two members of the count team (wrap team), independently from each other, shall count the ending coin room inventory;

(B) The counts in paragraph (i)(1)(ii)(A) of this section shall be recorded on a summary report(s) which evidences the calculation of the final wrap by subtracting the beginning inventory from the sum of the ending inventory and transfers in and out of the coin room;

(C) The same count team members shall compare the calculated wrap to the weigh/count, recording the comparison and noting any variances on the summary report;

(D) A member of the cage/vault department shall count the ending coin room inventory by denomination and shall reconcile it to the beginning inventory, wrap, transfers and weigh/count; and

(E) At the conclusion of the reconciliation, at least two count/wrap team members and the verifying employee shall sign the summary report(s) attesting to its accuracy.

(iii) The functions described in paragraph (i)(1)(ii)(A) and (C) of this section may be performed by only one count team member. That count team member must then sign the summary report, along with the verifying employee, as required under paragraph (i)(1)(ii)(E).

(2) If the count room is segregated from the coin room, or if the coin room is used as a count room and the coin room inventory is secured to preclude access by the count team, all of the following requirements shall be completed, at the conclusion of the count:

(i) At least two members of the count/wrap team shall count the final wrapped gaming machine drop independently from each other;

(ii) The counts shall be recorded on a summary report;

(iii) The same count team members (or the accounting department) shall compare the final wrap to the weigh/count, recording the comparison, and noting any variances on the summary report;

(iv) A member of the cage/vault department shall count the wrapped gaming machine drop by denomination and reconcile it to the weigh/count;

(v) At the conclusion of the reconciliation, at least two count team members and the cage/vault employee shall sign the summary report attesting to its accuracy; and

(vi) The wrapped coins (exclusive of proper transfers) shall be transported to the cage, vault or coin vault after the reconciliation of the weigh/count to the wrap.

(j) *Transfers during the gaming machine coin count and wrap.* (1) Subject to the approval of the Tribal gaming regulatory authority, transfers may be permitted during the count and wrap.

(2) Each transfer shall be recorded on a separate multi-part form with a preprinted or concurrently-printed form number (used solely for gaming machine count transfers) which shall be subsequently reconciled by the accounting department to ensure the accuracy of the reconciled gaming machine drop.

(3) Each transfer must be counted and signed for by at least two members of the count team and by someone independent of the count team who is responsible for authorizing the transfer.

(k) *Gaming machine drop key control standards.* (1) Gaming machine coin drop cabinet keys, including duplicates, shall be maintained by a department independent of the gaming machine department.

(2) The physical custody of the keys needed to access gaming machine coin drop cabinets, including duplicates, shall require the involvement of two persons, one of whom is independent of the gaming machine department.

(3) Two employees (separate from key custodian) shall be required to accompany such keys while checked out and observe each time gaming machine drop cabinets are accessed, unless surveillance is notified each time keys are checked out and surveillance observes the person throughout the period the keys are checked out.

(l) *Table game drop box and bill acceptor canister key control standards.* (1) Procedures shall be developed and implemented to insure that unauthorized access to empty table game drop boxes shall not occur from the time the boxes leave the storage racks until they are placed on the tables.

(2) The involvement of at least two individuals independent of the cage department shall be required to access stored empty table game drop boxes.

(3) The release keys shall be separately keyed from the contents keys.

(4) At least two count team members are required to be present at the time count room and other count keys are issued for the count.

(5) All duplicate keys shall be maintained in a manner that provides the same degree of control as is required for the original keys. Records shall be maintained for each key duplicated that indicate the number of keys made and destroyed.

(6) Logs shall be maintained by the custodian of sensitive keys to document authorization of personnel accessing keys.

(m) *Table game drop box release keys.* (1) The table game drop box release keys shall be maintained by a department independent of the pit department.

(2) Only the person(s) authorized to remove table game drop boxes from the tables shall be allowed access to the table game drop box release keys; however, the count team members may have access to the release keys during the soft count in order to reset the table game drop boxes.

(3) Persons authorized to remove the table game drop boxes shall be precluded from having simultaneous access to the table game drop box contents keys and release keys.

(4) For situations requiring access to a table game drop box at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(n) *Bill acceptor canister release keys.* (1) The bill acceptor canister release keys shall be maintained by a department independent of the gaming machine department.

(2) Only the person(s) authorized to remove bill acceptor canisters from the gaming machines shall be allowed access to the release keys.

(3) Persons authorized to remove the bill acceptor canisters shall be precluded from having simultaneous access to the bill acceptor canister contents keys and release keys.

(4) For situations requiring access to a bill acceptor canister at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(o) *Table game drop box storage rack keys.* Persons authorized to obtain table game drop box storage rack keys shall be precluded from having simultaneous access to table game drop box contents keys with the exception of the count team.

(p) *Bill acceptor canister storage rack keys.* Persons authorized to obtain bill acceptor canister storage rack keys shall be precluded from having simultaneous access to bill acceptor canister contents

keys with the exception of the count team.

(q) *Table game drop box contents keys.* (1) The physical custody of the keys needed for accessing stored, full table game drop box contents shall require the involvement of persons from at least two separate departments, with the exception of the count team.

(2) Access to the table game drop box contents key at other than scheduled count times shall require the involvement of at least two persons from separate departments, including management. The reason for access shall be documented with the signatures of all participants and observers.

(3) Only count team members shall be allowed access to table game drop box contents keys during the count process.

(r) Bill acceptor canister contents keys. The physical custody of the keys needed for accessing stored, full bill acceptor canister contents shall require involvement of persons from two separate departments, with the exception of the count team.

(2) Access to the bill acceptor canister contents key at other than scheduled count times shall require the involvement of at least two persons from separate departments, including management. The reason for access shall be documented with the signatures of all participants and observers.

(3) Only the count team members shall be allowed access to bill acceptor canister contents keys during the count process.

(s) *Emergency drop procedures.* Emergency drop procedures shall be developed by the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority.

(t) *Equipment standards for gaming machine count.* (1) A weigh scale calibration module shall be secured so as to prevent unauthorized access (e.g., prenumbered seal, lock and key, etc.).

(2) Someone independent of the cage, vault, gaming machine, and count team functions shall be required to be present whenever the calibration module is accessed. Such access shall be documented and maintained.

(3) If a weigh scale interface is used, it shall be adequately restricted so as to prevent unauthorized access (passwords, keys, etc.).

(4) If the weigh scale has a zero adjustment mechanism, it shall be physically limited to minor adjustments (e.g., weight of a bucket) or physically situated such that any unnecessary adjustments to it during the weigh process would be observed by other count team members.

(5) The weigh scale and weigh scale interface (if applicable) shall be tested by someone who is independent of the cage, vault, and gaming machine departments and count team at least quarterly. At least annually, this test shall be performed by internal audit in accordance with the internal audit standards. The result of these tests shall be documented and signed by the person(s) performing the test.

(6) Prior to the gaming machine count, at least two employees shall verify the accuracy of the weigh scale with varying weights or with varying amounts of previously counted coin for each denomination to ensure the scale is properly calibrated (varying weights/coin from drop to drop is acceptable).

(7) If a mechanical coin counter is used (instead of a weigh scale), the Tribal gaming regulatory authority or the gaming operation shall establish, and the gaming operation shall comply, with procedures that are equivalent to those described in paragraphs (t)(4), (t)(5), and (t)(6) of this section. Such procedures shall be subject to the approval of the Tribal gaming regulatory authority.

(8) If a coin meter count machine is used, the count team member shall record the machine number denomination and number of coins in ink on a source document, unless the meter machine automatically records such information.

(i) A count team member shall test the coin meter count machine before the actual count to ascertain if the metering device is functioning properly with a predetermined number of coins for each denomination.

(ii) [Reserved]

§ 542.32 What are the minimum internal control standards for internal audit for Tier B gaming operations?

(a) *Internal audit personnel.* (1) For Tier B gaming operations, a separate internal audit department must be maintained. Alternatively, designating personnel (who are independent with respect to the departments/procedures being examined) to perform internal audit work satisfies the requirements of this paragraph.

(2) The internal audit personnel shall report directly to the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe in accordance with the definition of internal audit in § 542.2.

(b) *Audits.* (1) Internal audit personnel shall perform audits of all major gaming areas of the gaming operation. The following are reviewed at least annually:

(i) Bingo, including but not limited to, bingo card control, payout procedures, and cash reconciliation process;

(ii) Pull tabs, including but not limited to, statistical records, winner verification, perpetual inventory, and accountability of sales versus inventory;

(iii) Card games, including but not limited to, card games operation, cash exchange procedures, shill transactions, and count procedures;

(iv) Keno, including but not limited to, game write and payout procedures, sensitive key location and control, and a review of keno auditing procedures;

(v) Pari-mutual wagering, including write and payout procedures, and pari-mutual auditing procedures;

(vi) Table games, including but not limited to, fill and credit procedures, pit credit play procedures, rim credit procedures, soft drop/count procedures and the subsequent transfer of funds, unannounced testing of count room currency counters and/or currency interface, location and control over sensitive keys, the tracing of source documents to summarized documentation and accounting records, and reconciliation to restricted copies;

(vii) Gaming machines, including but not limited to, jackpot payout and gaming machine fill procedures, gaming machine drop/count and bill acceptor drop/count and subsequent transfer of funds, surprise testing of weigh scale and weigh scale interface, unannounced testing of count room currency counters and/or currency interface, gaming machine drop cabinet access, tracing of source documents to summarized documentation and accounting records, reconciliation to restricted copies, location and control over sensitive keys, compliance with EPROM duplication procedures, and compliance with MICS procedures for gaming machines that accept currency or coins and issue cash-out tickets or gaming machines that do not accept currency or coin and do not return currency or coin;

(viii) Cage and credit procedures including all cage, credit, and collection procedures, and the reconciliation of trial balances to physical instruments on a sample basis. Cage accountability shall be reconciled to the general ledger;

(ix) Information technology functions, including review for compliance with information technology standards;

(x) Complimentary service or item, including but not limited to, procedures whereby complimentary service items are issued, authorized, and redeemed; and

(xi) Any other internal audits as required by the Tribal gaming regulatory authority.

(2) In addition to the observation and examinations performed under paragraph (b)(1) of this section, follow-up observations and examinations shall be performed to verify that corrective action has been taken regarding all instances of noncompliance cited by internal audit, the independent accountant, and/or the Commission. The verification shall be performed within six months following the date of notification.

(3) Whenever possible, internal audit observations shall be performed on an unannounced basis (i.e., without the employees being forewarned that their activities will be observed). Additionally, if the independent accountant also performs the internal audit function, the accountant shall perform separate observations of the table games/gaming machine drops and counts to satisfy the internal audit observation requirements and independent accountant tests of controls as required by the American Institute of Certified Public Accountants guide.

(c) *Documentation.* (1) Documentation (e.g., checklists, programs, reports, etc.) shall be prepared to evidence all internal audit work performed as it relates to the requirements in this section, including all instances of non-compliance.

(2) The internal audit department shall operate with audit programs, which, at a minimum, address the MICS. Additionally, the department shall properly document the work performed, the conclusions reached, and the resolution of all exceptions. Institute of Internal Auditors standards are recommended but not required.

(d) *Reports.* (1) Reports documenting audits performed shall be maintained and made available to the Commission upon request. The audit reports shall include the following information:

(i) Audit objectives;

(ii) Audit procedures and scope;

(iii) Findings and conclusions;

(iv) Recommendations, if applicable; and

(v) Management's response.

(2) [Reserved]

(e) *Material exceptions.* All material exceptions resulting from internal audit work shall be investigated and resolved with the results of such being documented and retained for five years.

(f) *Role of management.* (1) Internal audit findings shall be reported to management.

(2) Management shall be required to respond to internal audit findings stating corrective measures to be taken to avoid recurrence of the audit exception. Such management responses shall be included in the internal audit report that will be delivered to management and the Tribal gaming regulatory authority.

§ 542.33 What are the minimum internal control standards for surveillance for Tier B gaming operations?

(a) The surveillance system shall be maintained and operated from a staffed surveillance room and shall provide surveillance over gaming areas.

(b) The entrance to the surveillance room shall be located so that it is not readily accessible by either gaming operation employees who work primarily on the casino floor, or the general public.

(c) Access to the surveillance room shall be limited to surveillance personnel, designated employees, and other persons authorized in accordance with the surveillance department policy. Such policy shall be subject to the approval of the Tribal gaming regulatory authority. The surveillance department shall maintain a sign-in log of other authorized persons entering the surveillance room.

(d) Surveillance room equipment shall have total override capability over all other satellite surveillance equipment located outside the surveillance room.

(e) The surveillance system shall include date and time generators which possess the capability to display the date and time of recorded events on video and/or digital recordings. The displayed date and time shall not significantly obstruct the recorded view.

(f) The surveillance department shall strive to ensure staff is trained in the use of the equipment, knowledge of the games, and house rules.

(g) Each camera required by the standards in this section shall be installed in a manner that will prevent it from being readily obstructed, tampered with, or disabled by patrons or employees.

(h) Each camera required by the standards in this section shall possess the capability of having its picture displayed on a monitor and recorded. The surveillance system shall include sufficient numbers of monitors and recorders to simultaneously display and record multiple gaming and count room activities, and record the views of all dedicated cameras and motion activated dedicated cameras.

(i) Reasonable effort shall be made to repair each malfunction of surveillance system equipment required by the standards in this section within seventy-two (72) hours after the malfunction is discovered.

(1) In the event of a dedicated camera malfunction, the gaming operation or surveillance department shall immediately provide alternative camera coverage or other security measures, such as additional supervisory or security personnel, to protect the subject activity.

(2) [Reserved]

(j) *Bingo.* (1) The surveillance system shall possess the capability to monitor the bingo ball drawing device or random number generator which shall be recorded during the course of the draw by a dedicated camera with sufficient clarity to identify the balls drawn or numbers selected.

(2) The surveillance system shall monitor and record the game board and the activities of the employees responsible for drawing, calling, and entering the balls drawn or numbers selected.

(k) *Card games.* The surveillance system shall monitor and record general activities in each card room with sufficient clarity to identify the employees performing the different functions.

(l) *Progressive card games.* (1) Each progressive card game with a progressive jackpot of $25,000 or more shall be recorded and monitored by dedicated cameras that provide coverage of:

(i) The table surface, sufficient that the card values and card suits can be clearly identified;

(ii) An overall view of the entire table with sufficient clarity to identify patrons and dealer; and

(iii) A view of the posted jackpot amount.

(2) [Reserved]

(m) *Keno.* (1) The surveillance system shall possess the capability to monitor the keno ball drawing device or random number generator which shall be recorded during the course of the draw by a dedicated camera with sufficient clarity to identify the balls drawn or numbers selected.

(2) The surveillance system shall monitor and record general activities in each keno game area with sufficient clarity to identify the employees performing the different functions.

(n) *Pari-mutuel.* The surveillance system shall monitor and record general activities in the pari-mutuel area, to include the ticket writer and cashier areas, with sufficient clarity to identify the employees performing the different functions.

(o) *Table games.* (1) Operations with four (4) or more table games. Except as otherwise provided in paragraphs (o)(3), (4), and (5) of this section, the surveillance system of gaming operations operating four (4) or more table games shall provide at a minimum

one (1) pan-tilt-zoom camera per two (2) tables and surveillance must be capable of taping:

(i) With sufficient clarity to identify patrons and dealers; and

(ii) With sufficient coverage and clarity to simultaneously view the table bank and determine the configuration of wagers, card values, and game outcome.

(iii) One (1) dedicated camera per table and one (1) pan-tilt-zoom camera per four (4) tables may be an acceptable alternative procedure to satisfy the requirements of this paragraph.

(2) *Operations with three (3) or fewer table games.* The surveillance system of gaming operations operating three (3) or fewer table games shall:

(i) Comply with the requirements of paragraph (o)(1) of this section; or

(ii) Have one (1) overhead camera at each table.

(3) *Craps.* All craps tables shall have two (2) dedicated cross view cameras covering both ends of the table.

(4) *Roulette.* All roulette areas shall have one (1) overhead dedicated camera covering the roulette wheel and shall also have one (1) dedicated camera covering the play of the table.

(5) *Big wheel.* All big wheel games shall have one (1) dedicated camera viewing the wheel.

(p) *Progressive table games.* (1) Each progressive table game with a progressive jackpot of $25,000 or more shall be recorded and monitored by dedicated cameras that provide coverage of:

(i) The table surface, sufficient that the card values and card suits can be clearly identified;

(ii) An overall view of the entire table with sufficient clarity to identify patrons and dealer; and

(iii) A view of the progressive meter jackpot amount. If several tables are linked to the same progressive jackpot meter, only one meter need be recorded.

(2) [Reserved]

(q) *Gaming machines.* (1) Except as otherwise provided in paragraphs (q)(2) and (3) of this section, each gaming machine offering a payout of more than $250,000 shall be monitored by a dedicated camera(s) to provide coverage of:

(i) All patrons and employees at the gaming machine, and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(2) *In-house progressive machine.* Each in-house progressive gaming machine offering a base payout amount of more than $100,000 shall be monitored by a dedicated camera(s) to provide coverage of:

(i) All patrons and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(3) *Wide-area progressive machine.* Each wide-area progressive gaming machine offering a base payout amount of more than $1.5 million and monitored by an independent vendor utilizing an online progressive computer system shall be monitored by a dedicated camera(s) to provide coverage of:

(i) All patrons and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(4) Notwithstanding paragraph (q)(1) of this section, if the gaming machine is a multi-game machine, the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, may develop and implement alternative procedures to verify payouts.

(r) *Cage and vault.* (1) The surveillance system shall monitor and record a general overview of activities occurring in each cage and vault area with sufficient clarity to identify employees within the cage and patrons and employees at the counter areas.

(2) Each cashier station shall be equipped with one (1) dedicated overhead camera covering the transaction area.

(3) The surveillance system shall be used as an overview for cash transactions. This overview should include the customer, the employee, and the surrounding area.

(s) *Fills and credits.* (1) The cage or vault area in which fills and credits are transacted shall be monitored and recorded by a dedicated camera or motion activated dedicated camera that provides coverage with sufficient clarity to identify the chip values and the amounts on the fill and credit slips.

(2) Controls provided by a computerized fill and credit system may be deemed an adequate alternative to viewing the fill and credit slips.

(t) *Currency and coin.* The surveillance system shall monitor and record with sufficient clarity all areas where currency or coin may be stored or counted. The surveillance system shall provide for:

(i) Coverage of scales shall be sufficiently clear to view any attempted manipulation of the recorded data.

(ii) Monitoring and recording of the table game drop box storage rack or area by either a dedicated camera or a motion-detector activated camera.

(iii) Monitoring and recording of all areas where coin may be stored or counted, including the hard count room, all doors to the hard count room, all scales and wrapping machines, and all areas where uncounted coin may be stored during the drop and count process.

(iv) Monitoring and recording of soft count room, including all doors to the room, all table game drop boxes, safes, and counting surfaces, and all count team personnel. The counting surface area must be continuously monitored by a dedicated camera during the soft count.

(v) Monitoring and recording of all areas where currency is sorted, stacked, counted, verified, or stored during the soft count process.

(2) [Reserved]

(u) *Change booths.* The surveillance system shall monitor and record a general overview of the activities occurring in each gaming machine change booth.

(v) *Video recording and/or digital record retention.* All video recordings and/or digital records of coverage provided by the dedicated cameras or motion-activated dedicated cameras required by the standards in this section shall be retained for a minimum of seven (7) days.

(2) Recordings involving suspected or confirmed gaming crimes, unlawful activity, or detentions by security personnel, must be retained for a minimum of 30 days.

(3) Copies of video recordings and/or digital records shall be provided to the Commission upon request. If an original is requested, the Commission shall provide written receipt to the Tribal gaming regulatory authority.

(w) *Video library log.* A video library log, or comparable alternative procedure approved by the Tribal gaming regulatory authority, shall be maintained to demonstrate compliance with the storage, identification, and retention standards required in this section.

(x) *Malfunction and repair log.* Surveillance personnel shall maintain a log or alternative procedure approved by the Tribal gaming regulatory authority that documents each malfunction and repair of the surveillance system as defined in this section.

(2) The log shall state the time, date, and nature of each malfunction, the efforts expended to repair the malfunction, and the date of each effort, the reasons for any delays in repairing the malfunction, the date the malfunction is repaired, and where applicable, any alternative security measures that were taken.

(y) *Surveillance log.* Surveillance personnel shall maintain a surveillance

log of all surveillance activities in the surveillance room. The log shall be maintained by surveillance room personnel and shall be stored securely within the surveillance department. At a minimum, the following information shall be recorded in a surveillance log:

(i) Date;

(ii) Time commenced and terminated;

(iii) Activity observed or performed;

(iv) The name or license credential number of each person who initiates, performs, or supervises the surveillance; and

(v) Summary of the results of the surveillance of suspicious activity. The summary may be maintained in a separate log.

(2) [Reserved]

Tier C Gaming Operations

§ 542.40 What is a Tier C gaming operation?

A Tier C gaming operation is one with annual gross gaming revenues of more than $15 million.

§ 542.41 What are the minimum internal control standards for drop and count for Tier C gaming operations?

(a) *Table game drop standards.* (1) The setting out of empty table game drop boxes and the drop shall be a continuous process.

(2) At the end of each shift:

(i) All locked table game drop boxes shall be removed from the tables by an individual independent of the pit shift being dropped;

(ii) A separate drop box shall be placed on each table opened at any time during each shift or a gaming operation may utilize a single drop box with separate openings and compartments for each shift; and

(iii) Upon removal from the tables, table game drop boxes shall be transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(3) If drop boxes are not placed on all tables, then the pit department shall document which tables were open during the shift.

(4) The transporting of table game drop boxes shall be performed by a minimum of two individuals, at least one of whom is independent of the pit shift being dropped.

(5) All table game drop boxes shall be posted with a number corresponding to a permanent number on the gaming table and marked to indicate game, table number, and shift.

(6) Surveillance shall be notified when the drop is to begin so that surveillance may monitor the activities.

(b) *Soft count room personnel.* (1) The table game soft count and the gaming machine bill acceptor count shall be performed by a minimum of three employees.

(2) Count room personnel shall not be allowed to exit or enter the count room during the count except for emergencies or scheduled breaks. At no time during the count, shall there be fewer than three employees in the count room until the drop proceeds have been accepted into cage/vault accountability. Surveillance shall be notified whenever count room personnel exit or enter the count room during the count.

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same three individuals more than 4 days per week. This standard shall not apply to gaming operations that utilize a count team of more than three individuals.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, however, a dealer or a cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all soft count documentation.

(c) *Table game soft count standards.*

(1) The table game soft count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The table game drop boxes shall be individually emptied and counted in such a manner to prevent the commingling of funds between boxes until the count of the box has been recorded.

(i) The count of each box shall be recorded in ink or other permanent form of recordation.

(ii) A second count shall be performed by an employee on the count team who did not perform the initial count.

(iii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(5) If currency counters are utilized and the count room table is used only to empty boxes and sort/stack contents, a count team member shall be able to observe the loading and unloading of all currency at the currency counter, including rejected currency.

(6) Table game drop boxes, when empty, shall be shown to another member of the count team, or to another person who is observing the count, or to surveillance, provided the count is monitored in its entirety by someone independent of the count.

(7) Orders for fill/credit (if applicable) shall be matched to the fill/credit slips. Fills and credits shall be traced to or recorded on the count sheet.

(8) Pit marker issue and payment slips (if applicable) removed from the table game drop boxes shall either be:

(i) Traced to or recorded on the count sheet by the count team; or

(ii) Totaled by shift and traced to the totals documented by the computerized system. Accounting personnel shall verify the issue/payment slip for each table is accurate.

(9) Foreign currency exchange forms (if applicable) removed from the table game drop boxes shall be reviewed for the proper daily exchange rate and the conversion amount shall be recomputed by the count team. Alternatively, this may be performed by accounting/auditing employees.

(10) The opening/closing table and marker inventory forms (if applicable) shall either be:

(i) Examined and traced to or recorded on the count sheet; or

(ii) If a computerized system is used, accounting personnel can trace the opening/closing table and marker inventory forms to the count sheet. Discrepancies shall be investigated with the findings documented and maintained for inspection.

(11) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(12) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(13) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such individual shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(14) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or someone other than the cashiers department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(15) Access to stored, full table game drop boxes shall be restricted to authorized members of the drop and count teams.

(16) All table game drop boxes shall be posted with a number corresponding to a permanent number on the gaming table and marked to indicate game, table number, and shift.

(d) *Gaming machine bill acceptor drop standards.* (1) A minimum of three employees shall be involved in the removal of the gaming machine drop, at least one of who is independent of the gaming machine department.

(2) All bill acceptor canisters shall be removed only at the time previously designated by the gaming operations and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) Surveillance shall be notified when the drop is to begin so that surveillance may monitor the activities.

(i) Surveillance shall record in a proper log or journal in a legible manner any exceptions or variations to established procedures observed during the drop. Such log or journal shall be made available for review to authorized persons only.

(ii) [Reserved]

(4) The bill acceptor canisters shall be removed by an individual independent of the gaming machine department then transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(i) Security shall be provided over the bill acceptor canisters removed from the gaming machines and awaiting transport to the count room.

(ii) The transporting of bill acceptor canisters shall be performed by a minimum of two individuals, at least one of who is independent of the gaming machine department.

(5) All bill acceptor canisters shall be posted with a number corresponding to a permanent number on the gaming machine.

(e) *Gaming machine bill acceptor count standards.* (1) The gaming machine bill acceptor count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The bill acceptor canisters shall be individually emptied and counted in such a manner to prevent the commingling of funds between canisters until the count of the canister has been recorded.

(i) The count of each canister shall be recorded in ink or other permanent form of recordation.

(ii) A second count shall be performed by an employee on the count team who did not perform the initial count.

(iii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(5) If currency counters are utilized and the count room table is used only to empty canisters and sort/stack contents, a count team member shall be able to observe the loading and unloading of all currency at the currency counter, including rejected currency.

(6) Canisters, when empty, shall be shown to another member of the count team, or to another person who is observing the count, or to surveillance, provided that the count is monitored in its entirety by someone independent of the count.

(7) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(8) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(9) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such individual shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(10) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or someone other than the cashiers department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(11) Access to stored bill acceptor canisters, full or empty, shall be restricted to authorized members of the drop and count teams.

(12) All bill acceptor canisters shall be posted with a number corresponding to a permanent number on the gaming machine.

(f) *Gaming machine coin drop standards.* (1) A minimum of three employees shall be involved in the removal of the gaming machine drop, at least one of who is independent of the gaming machine department.

(2) All drop buckets shall be removed only at the time previously designated by the gaming operation and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) Surveillance shall be notified when the drop is to begin in order that surveillance may monitor the activities.

(i) Surveillance shall record in a proper log or journal in a legible manner any exceptions or variations to established procedures observed during the drop. Such log or journal shall be made available for review to authorized persons only.

(ii) [Reserved]

(4) Security shall be provided over the buckets removed from the gaming machine drop cabinets and awaiting transport to the count room.

(5) As each machine is opened, the contents shall be tagged with its respective machine number if the bucket is not permanently marked with the machine number. The contents shall be transported directly to the area designated for the counting of such drop proceeds. If more than one trip is required to remove the contents of the machines, the filled carts of coins shall be securely locked in the room designed for counting or in another equivalently secure area with comparable controls. There shall be a locked covering on any carts in which the drop route includes passage out of doors.

(i) Alternatively, a smart bucket system that electronically identifies and tracks the gaming machine number, and facilitates the proper recognition of gaming revenue, shall satisfy the requirements of this paragraph.

(ii) [Reserved]

(6) Each drop bucket in use shall be:

(i) Housed in a locked compartment separate from any other compartment of the gaming machine and keyed

differently than other gaming machine compartments; and

(ii) Identifiable to the gaming machine from which it is removed. If the gaming machine is identified with a removable tag that is placed in the bucket, the tag shall be placed on top of the bucket when it is collected.

(7) Each gaming machine shall have drop buckets into which coins or tokens that are retained by the gaming machine are collected. Drop bucket contents shall not be used to make change or pay hand-paid payouts.

(8) The collection procedures may include procedures for dropping gaming machines that have trays instead of drop buckets.

(g) *Hard count room personnel.* The weigh/count shall be performed by a minimum of three employees.

(2) At no time during the weigh/count shall there be fewer than three employees in the count room until the drop proceeds have been accepted into cage/vault accountability. Surveillance shall be notified whenever count room personnel exit or enter the count room during the count.

(i) If the gaming machine count is conducted with a continuous mechanical count meter which is not reset during the count and is verified in writing by at least three employees at the start and end of each denomination count, then one employee may perform the wrap.

(ii) [Reserved]

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same three individuals more than four days per week. This standard shall not apply to gaming operations that utilize a count team of more than three individuals.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, unless they are non-supervisory gaming machine employees and perform the laborer function only (A non-supervisory gaming machine employee is defined as a person below the level of gaming machine shift supervisor). A cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all count documentation.

(h) *Gaming machine coin count and wrap standards.* (1) Coins shall include tokens.

(2) The gaming machine coin count and wrap shall be performed in a count room or other equivalently secure area with comparable controls.

(i) Alternatively, an on-the-floor drop system utilizing a mobile scale shall satisfy the requirements of this paragraph, subject to the following conditions:

(A) The gaming operation shall utilize and maintain an effective on-line gaming machine monitoring system, as described in § 542.12(r)(3);

(B) Surveillance shall be notified when the weigh/drop/count begins and shall be capable of monitoring the entire process;

(C) An independent observer shall remain by the weigh scale at all times and shall observe the entire weigh/drop/count process;

(D) Physical custody of the keys needed to access the laptop and video compartment shall require the involvement of two persons, one of whom is independent of the drop and count team;

(E) The mule key, the laptop and video compartment keys, and the remote control for the VCR shall be maintained by a department independent of the gaming machine department. The appropriate personnel shall sign out these keys;

(F) An independent person shall be required to accompany these keys while they are checked out, and observe each time the laptop compartment is opened;

(G) The laptop access panel shall not be opened outside the hard count room, except in instances when the laptop must be rebooted as a result of a crash, lock up, or other situation requiring immediate corrective action;

(H) User access to the system shall be limited to those employees required to have full or limited access to complete the weigh/drop/count;

(I) Prior to the drop, the drop/count team shall ensure the scale batteries are charged;

(J) Prior to the drop, a videotape shall be inserted into the VCR on board the mule and the VCR shall be activated;

(K) The weigh scale test shall be performed prior to removing the unit from the hard count room for the start of the weigh/drop/count;

(L) When the weigh/drop/count is completed, the independent observer shall access the laptop compartment, end the recording session, eject the videotape, and deliver the videotape to surveillance; and

(M) The gaming operation must obtain the security camera available with the system, and this camera must be added in such a way as to eliminate tampering.

(ii) [Reserved]

(3) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(4) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(5) The following functions shall be performed in the counting of the gaming machine drop:

(i) Recorder function, which involves the recording of the gaming machine count; and

(ii) Count team supervisor function, which involves the control of the gaming machine weigh and wrap process. The supervisor is precluded from performing the initial recording of the weigh/count unless a weigh scale with a printer is used.

(6) The gaming machine drop shall be counted, wrapped, and reconciled in such a manner to prevent the commingling of gaming machine drop coin with coin (for each denomination) from the next gaming machine drop until the count of the gaming machine drop has been recorded. If the coins are not wrapped immediately after being weighed or counted, they shall be secured and not commingled with other coin.

(i) The amount of the gaming machine drop from each machine shall be recorded in ink or other permanent form of recordation on a gaming machine count document by the recorder or mechanically printed by the weigh scale.

(ii) Corrections to information originally recorded by the count team on gaming machine count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(A) If a weigh scale interface is used, corrections to gaming machine count data shall be made using either of the following:

(*1*) Crossing out the error on the gaming machine document, entering the correct figure, and then obtaining the initials of at least two count team employees. If this procedure is used, an employee independent of the gaming machine department and count team shall enter the correct figure into the computer system prior to the generation of related gaming machine reports; or

(*2*) During the count process, correct the error in the computer system and enter the passwords of at least two count team employees. If this procedure is used, an exception report shall be generated by the computer system identifying the gaming machine

number, the error, the correction, and the count team employees attesting to the correction.

(B) [Reserved]

(7) If applicable, the weight shall be converted to dollar amounts before the reconciliation of the weigh to the wrap.

(8) If a coin meter is used, a count team member shall convert the coin count for each denomination into dollars and shall enter the results on a summary sheet.

(9) The recorder and at least one other count team member shall sign the weigh tape and the gaming machine count document attesting to the accuracy of the weigh/count.

(10) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(11) All drop proceeds and cash equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person/employee independent of the revenue generation and the count process for verification. Such individual shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(12) All gaming machine count and wrap documentation, including any applicable computer storage media, shall be delivered to the accounting department by a count team member or someone other than the cashier's department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(13) If the coins are transported off the property, a second (alternative) count procedure shall be performed before the coins leave the property. Any variances shall be documented.

(14) *Variances.* Large (by denomination, either $1,000 or 2% of the drop, whichever is less) or unusual (e.g., zero for weigh/count or patterned for all counts) variances between the weigh/count and wrap shall be investigated by management personnel independent of the gaming machine department, count team, and the cage/vault functions on a timely basis. The results of such investigation shall be documented and maintained.

(i) *Security of the count room inventory during the gaming machine coin count and wrap.* (1) If the count room serves as a coin room and coin room inventory is not secured so as to preclude access by the count team, then the following standards shall apply:

(i) At the commencement of the gaming machine count the following requirements shall be met:

(A) The coin room inventory shall be counted by at least two employees, one of whom is a member of the count team and the other is independent of the weigh/count and wrap procedures;

(B) The count in paragraph (i)(1)(i)(A) of this section shall be recorded on an appropriate inventory form;

(ii) Upon completion of the wrap of the gaming machine drop:

(A) At least two members of the count team (wrap team), independently from each other, shall count the ending coin room inventory;

(B) The counts in paragraph (i)(1)(ii)(A) of this section shall be recorded on a summary report(s) which evidences the calculation of the final wrap by subtracting the beginning inventory from the sum of the ending inventory and transfers in and out of the coin room;

(C) The same count team members shall compare the calculated wrap to the weigh/count, recording the comparison and noting any variances on the summary report;

(D) A member of the cage/vault department shall count the ending coin room inventory by denomination and shall reconcile it to the beginning inventory, wrap, transfers, and weigh/count; and

(E) At the conclusion of the reconciliation, at least two count/wrap team members and the verifying employee shall sign the summary report(s) attesting to its accuracy.

(2) If the count room is segregated from the coin room, or if the coin room is used as a count room and the coin room inventory is secured to preclude access by the count team, all of the following requirements shall be completed, at the conclusion of the count:

(i) At least two members of the count/wrap team shall count the final wrapped gaming machine drop independently from each other;

(ii) The counts shall be recorded on a summary report;

(iii) The same count team members (or the accounting department) shall compare the final wrap to the weigh/count, recording the comparison and noting any variances on the summary report;

(iv) A member of the cage/vault department shall count the wrapped gaming machine drop by denomination and reconcile it to the weigh/count;

(v) At the conclusion of the reconciliation, at least two count team members and the cage/vault employee shall sign the summary report attesting to its accuracy; and

(vi) The wrapped coins (exclusive of proper transfers) shall be transported to the cage, vault or coin vault after the reconciliation of the weigh/count to the wrap.

(j) *Transfers during the gaming machine coin count and wrap.* (1) Subject to the approval of the Tribal gaming regulatory authority, transfers may be permitted during the count and wrap.

(2) Each transfer shall be recorded on a separate multi-part form with a preprinted or concurrently-printed form number (used solely for gaming machine count transfers) which shall be subsequently reconciled by the accounting department to ensure the accuracy of the reconciled gaming machine drop.

(3) Each transfer must be counted and signed for by at least two members of the count team and by someone independent of the count team who is responsible for authorizing the transfer.

(k) *Gaming machine drop key control standards.* (1) Gaming machine coin drop cabinet keys, including duplicates, shall be maintained by a department independent of the gaming machine department.

(2) The physical custody of the keys needed to access gaming machine coin drop cabinets, including duplicates, shall require the involvement of two persons, one of whom is independent of the gaming machine department.

(3) Two employees (separate from key custodian) shall be required to accompany such keys while checked out and observe each time gaming machine drop cabinets are accessed, unless surveillance is notified each time keys are checked out and surveillance observes the person throughout the period the keys are checked out.

(l) *Table game drop box and bill acceptor canister key control standards.* (1) Procedures shall be developed and implemented to insure that unauthorized access to empty table game drop boxes shall not occur from the time the boxes leave the storage racks until they are placed on the tables.

(2) The involvement of at least two individuals independent of the cage department shall be required to access stored empty table game drop boxes.

(3) The release keys shall be separately keyed from the contents keys.

(4) At least three (two for table game drop box keys in operations with three tables or fewer) count team members are required to be present at the time count room and other count keys are issued for the count.

(5) All duplicate keys shall be maintained in a manner that provides the same degree of control as is required for the original keys. Records shall be maintained for each key duplicated that indicate the number of keys made and destroyed.

(6) Logs shall be maintained by the custodian of sensitive keys to document authorization of personnel accessing keys.

(m) *Table game drop box release keys.* (1) The table game drop box release keys shall be maintained by a department independent of the pit department.

(2) Only the person(s) authorized to remove table game drop boxes from the tables shall be allowed access to the table game drop box release keys; however, the count team members may have access to the release keys during the soft count in order to reset the table game drop boxes.

(3) Persons authorized to remove the table game drop boxes shall be precluded from having simultaneous access to the table game drop box contents keys and release keys.

(4) For situations requiring access to a table game drop box at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(n) *Bill acceptor canister release keys.* (1) The bill acceptor canister release keys shall be maintained by a department independent of the gaming machine department.

(2) Only the person(s) authorized to remove bill acceptor canisters from the gaming machines shall be allowed access to the release keys.

(3) Persons authorized to remove the bill acceptor canisters shall be precluded from having simultaneous access to the bill acceptor canister contents keys and release keys.

(4) For situations requiring access to a bill acceptor canister at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(o) *Table game drop box storage rack keys.* (1) Someone independent of the pit department shall be required to accompany the table game drop box storage rack keys and observe each time table game drop boxes are removed from or placed in storage racks.

(2) Persons authorized to obtain table game drop box storage rack keys shall be precluded from having simultaneous access to table game drop box contents keys with the exception of the count team.

(p) *Bill acceptor canister storage rack keys.* (1) Someone independent of the gaming machine department shall be required to accompany the bill acceptor canister storage rack keys and observe each time canisters are removed from or placed in storage racks.

(2) Persons authorized to obtain bill acceptor canister storage rack keys shall be precluded from having simultaneous access to bill acceptor canister contents keys with the exception of the count team.

(q) *Table game drop box contents keys.* (1) The physical custody of the keys needed for accessing stored, full table game drop box contents shall require the involvement of persons from at least two separate departments, with the exception of the count team.

(2) Access to the table game drop box contents key at other than scheduled count times shall require the involvement of at least three persons from separate departments, including management. The reason for access shall be documented with the signatures of all participants and observers.

(3) Only count team members shall be allowed access to table game drop box content keys during the count process.

(r) *Bill acceptor canister contents keys.* (1) The physical custody of the keys needed for accessing stored, full bill acceptor canister contents shall require involvement of persons from two separate departments, with the exception of the count team.

(2) Access to the bill acceptor canister contents key at other than scheduled count times shall require the involvement of at least three persons from separate departments, including management. The reason for access shall be documented with the signatures of all participants and observers.

(3) Only the count team members shall be allowed access to bill acceptor canister contents keys during the count process.

(s) *Emergency drop procedures.* Emergency drop procedures shall be developed by the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority.

(t) *Equipment standards for gaming machine count.* (1) A weigh scale calibration module shall be secured so as to prevent unauthorized access (e.g., prenumbered seal, lock and key, etc.).

(2) Someone independent of the cage, vault, gaming machine, and count team functions shall be required to be present whenever the calibration module is accessed. Such access shall be documented and maintained.

(3) If a weigh scale interface is used, it shall be adequately restricted so as to prevent unauthorized access (passwords, keys, etc.).

(4) If the weigh scale has a zero adjustment mechanism, it shall be physically limited to minor adjustments (e.g., weight of a bucket) or physically situated such that any unnecessary adjustments to it during the weigh process would be observed by other count team members.

(5) The weigh scale and weigh scale interface (if applicable) shall be tested by someone who is independent of the cage, vault, and gaming machine departments and count team at least quarterly. At least annually, this test shall be performed by internal audit in accordance with the internal audit standards. The result of these tests shall be documented and signed by the person(s) performing the test.

(6) Prior to the gaming machine count, at least two employees shall verify the accuracy of the weigh scale with varying weights or with varying amounts of previously counted coin for each denomination to ensure the scale is properly calibrated (varying weights/coin from drop to drop is acceptable).

(7) If a mechanical coin counter is used (instead of a weigh scale), the Tribal gaming regulatory authority or the gaming operation shall establish, and the gaming operation shall comply, with procedures that are equivalent to those described in paragraphs (t)(4), (t)(5), and (t)(6) of this section. Such procedures shall be subject to the approval of the Tribal gaming regulatory authority.

(8) If a coin meter count machine is used, the count team member shall record the machine number denomination and number of coins in ink on a source document, unless the meter machine automatically records such information.

(i) A count team member shall test the coin meter count machine before the actual count to ascertain if the metering device is functioning properly with a predetermined number of coins for each denomination.

(ii) [Reserved]

§ 542.42 What are the minimum internal control standards for internal audit for Tier C gaming operations?

(a) *Internal audit personnel.* (1) For Tier C gaming operations, a separate internal audit department shall be maintained whose primary function is performing internal audit work and which is independent with respect to the departments subject to audit.

(2) The internal audit personnel shall report directly to the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe in accordance with the definition of internal audit in § 542.2.

(b) *Audits.* (1) Internal audit personnel shall perform audits of all

major gaming areas of the gaming operation. The following are reviewed at least annually:

(i) Bingo, including but not limited to, bingo card control, payout procedures, and cash reconciliation process;

(ii) Pull tabs, including but not limited to, statistical records, winner verification, perpetual inventory, and accountability of sales versus inventory;

(iii) Card games, including but not limited to, card games operation, cash exchange procedures, shill transactions, and count procedures;

(iv) Keno, including but not limited to, game write and payout procedures, sensitive key location and control, and a review of keno auditing procedures;

(v) Pari-mutual wagering, including write and payout procedures, and pari-mutual auditing procedures;

(vi) Table games, including but not limited to, fill and credit procedures, pit credit play procedures, rim credit procedures, soft drop/count procedures and the subsequent transfer of funds, unannounced testing of count room currency counters and/or currency interface, location and control over sensitive keys, the tracing of source documents to summarized documentation and accounting records, and reconciliation to restricted copies;

(vii) Gaming machines, including but not limited to, jackpot payout and gaming machine fill procedures, gaming machine drop/count and bill acceptor drop/count and subsequent transfer of funds, surprise testing of weigh scale and weigh scale interface, unannounced testing of count room currency counters and/or currency interface, gaming machine drop cabinet access, tracing of source documents to summarized documentation and accounting records, reconciliation to restricted copies, location and control over sensitive keys, compliance with EPROM duplication procedures, and compliance with MICS procedures for gaming machines that accept currency or coins and issue cash-out tickets or gaming machines that do not accept currency or coin and do not return currency or coin;

(viii) Cage and credit procedures including all cage, credit, and collection procedures, and the reconciliation of trial balances to physical instruments on a sample basis. Cage accountability shall be reconciled to the general ledger;

(ix) Information technology functions, including review for compliance with information technology standards;

(x) Complimentary service or item, including but not limited to, procedures whereby complimentary service items are issued, authorized, and redeemed; and

(xi) Any other internal audits as required by the Tribal gaming regulatory authority.

(2) In addition to the observation and examinations performed under paragraph (b)(1) of this section, follow-up observations and examinations shall be performed to verify that corrective action has been taken regarding all instances of noncompliance cited by internal audit, the independent accountant, and/or the Commission. The verification shall be performed within six months following the date of notification.

(3) Whenever possible, internal audit observations shall be performed on an unannounced basis (i.e., without the employees being forewarned that their activities will be observed). Additionally, if the independent accountant also performs the internal audit function, the accountant shall perform separate observations of the table games/gaming machine drops and counts to satisfy the internal audit observation requirements and independent accountant tests of controls as required by the American Institute of Certified Public Accountants guide.

(c) *Documentation.* (1) Documentation (e.g., checklists, programs, reports, etc.) shall be prepared to evidence all internal audit work performed as it relates to the requirements in this section, including all instances of non-compliance.

(2) The internal audit department shall operate with audit programs, which, at a minimum, address the MICS. Additionally, the department shall properly document the work performed, the conclusions reached; and the resolution of all exceptions. Institute of Internal Auditors standards are recommended but not required.

(d) *Reports.* (1) Reports documenting audits performed shall be maintained and made available to the Commission upon request. The audit reports shall include the following information:

(i) Audit objectives;

(ii) Audit procedures and scope;

(iii) Findings and conclusions;

(iv) Recommendations, if applicable; and

(v) Management's response.

(2) [Reserved]

(e) *Material exceptions.* All material exceptions resulting from internal audit work shall be investigated and resolved with the results of such being documented and retained for five years.

(f) *Role of management.* (1) Internal audit findings shall be reported to management.

(2) Management shall be required to respond to internal audit findings stating corrective measures to be taken to avoid recurrence of the audit exception. Such management responses shall be included in the internal audit report that will be delivered to management and the Tribal gaming regulatory authority.

§ 542.43 What are the minimum internal control standards for surveillance for a Tier C gaming operation?

(a) The surveillance system shall be maintained and operated from a staffed surveillance room and shall provide surveillance over gaming areas.

(b) The entrance to the surveillance room shall be located so that it is not readily accessible by either gaming operation employees who work primarily on the casino floor, or the general public.

(c) Access to the surveillance room shall be limited to surveillance personnel, designated employees, and other persons authorized in accordance with the surveillance department policy. Such policy shall be subject to the approval of the Tribal gaming regulatory authority. The surveillance department shall maintain a sign-in log of other authorized persons entering the surveillance room.

(d) Surveillance room equipment shall have total override capability over all other satellite surveillance equipment located outside the surveillance room.

(e) In the event of power loss to the surveillance system, an auxiliary or backup power source shall be available and capable of providing immediate restoration of power to all elements of the surveillance system that enable surveillance personnel to observe the table games remaining open for play and all areas covered by dedicated cameras. Auxiliary or backup power sources such as a UPS System, backup generator, or an alternate utility supplier, satisfy this requirement.

(f) The surveillance system shall include date and time generators which possess the capability to display the date and time of recorded events on video and/or digital recordings. The displayed date and time shall not significantly obstruct the recorded view.

(g) The surveillance department shall strive to ensure staff is trained in the use of the equipment, knowledge of the games, and house rules.

(h) Each camera required by the standards in this section shall be installed in a manner that will prevent it from being readily obstructed, tampered with, or disabled by patrons or employees.

(i) Each camera required by the standards in this section shall possess the capability of having its picture

displayed on a monitor and recorded. The surveillance system shall include sufficient numbers of monitors and recorders to simultaneously display and record multiple gaming and count room activities, and record the views of all dedicated cameras and motion activated dedicated cameras.

(j) Reasonable effort shall be made to repair each malfunction of surveillance system equipment required by the standards in this section within seventy-two (72) hours after the malfunction is discovered.

(1) In the event of a dedicated camera malfunction, the gaming operation shall immediately provide alternative camera coverage or other security measures, such as additional supervisory or security personnel, to protect the subject activity.

(2) [Reserved]

(k) *Bingo.* (1) The surveillance system shall possess the capability to monitor the bingo ball drawing device or random number generator which shall be recorded during the course of the draw by a dedicated camera with sufficient clarity to identify the balls drawn or numbers selected.

(2) The surveillance system shall monitor and record the game board and the activities of the employees responsible for drawing, calling, and entering the balls drawn or numbers selected.

(l) *Card games.* The surveillance system shall monitor and record general activities in each card room with sufficient clarity to identify the employees performing the different functions.

(m) *Progressive card games.* (1) Each progressive card game with a progressive jackpot of $25,000 or more shall be recorded and monitored by dedicated cameras that provide coverage of:

(i) The table surface, sufficient that the card values and card suits can be clearly identified;

(ii) An overall view of the entire table with sufficient clarity to identify patrons and dealer; and

(iii) A view of the posted jackpot amount.

(2) [Reserved]

(n) *Keno.* The surveillance system shall possess the capability to monitor the keno ball drawing device or random number generator which shall be recorded during the course of the draw by a dedicated camera with sufficient clarity to identify the balls drawn or numbers selected.

(2) The surveillance system shall monitor and record general activities in each keno game area with sufficient clarity to identify the employees performing the different functions.

(o) *Pari-mutuel.* The surveillance system shall monitor and record general activities in the pari-mutuel area, to include the ticket writer and cashier areas, with sufficient clarity to identify the employees performing the different functions.

(p) *Table games.* (1) Operations with four (4) or more table games. Except as otherwise provided in paragraphs (p)(3), (4), and (5) of this section, the surveillance system of gaming operations operating four (4) or more table games shall provide at a minimum one (1) pan-tilt-zoom camera per two (2) tables and surveillance must be capable of taping:

(i) With sufficient clarity to identify patrons and dealers; and

(ii) With sufficient coverage and clarity to simultaneously view the table bank and determine the configuration of wagers, card values, and game outcome.

(iii) One (1) dedicated camera per table and one (1) pan-tilt-zoom camera per four (4) tables may be an acceptable alternative procedure to satisfy the requirements of this paragraph.

(2) *Operations with three (3) or fewer table games.* The surveillance system of gaming operations operating three (3) or fewer table games shall:

(i) Comply with the requirements of paragraph (p)(1) of this section; or

(ii) Have one (1) overhead camera at each table.

(3) *Craps.* All craps tables shall have two (2) dedicated cross view cameras covering both ends of the table.

(4) *Roulette.* All roulette areas shall have one (1) overhead dedicated camera covering the roulette wheel and shall also have one (1) dedicated camera covering the play of the table.

(5) *Big wheel.* All big wheel games shall have one (1) dedicated camera viewing the wheel.

(q) *Progressive table games.* (1) Each progressive table game with a progressive jackpot of $25,000 or more shall be recorded and monitored by dedicated cameras that provide coverage of:

(i) The table surface, sufficient that the card values and card suits can be clearly identified;

(ii) An overall view of the entire table with sufficient clarity to identify patrons and dealer; and

(iii) A view of the progressive meter jackpot amount. If several tables are linked to the same progressive jackpot meter, only one meter need be recorded.

(2) [Reserved]

(r) *Gaming machines.* (1) Except as otherwise provided in paragraphs (r)(2) and (3) of this section, each gaming machine offering a payout of more than $250,000 shall be monitored by a dedicated camera(s) to provide coverage of:

(i) All patrons and employees at the gaming machine, and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(2) *In-house progressive machine.* Each in-house progressive gaming machine offering a base payout amount of more than $100,000 shall be monitored by a dedicated camera(s) to provide coverage of:

(i) All patrons and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(3) *Wide-area progressive machine.* Each wide-area progressive gaming machine offering a base payout amount of more than $1.5 million and monitored by an independent vendor utilizing an online progressive computer system shall be monitored by a dedicated camera(s) to provide coverage of:

(i) All patrons and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(4) Notwithstanding paragraph (r)(1) of this section, if the gaming machine is a multi-game machine, the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, may develop and implement alternative procedures to verify payouts.

(s) *Cage and vault.* (1) The surveillance system shall monitor and record a general overview of activities occurring in each cage and vault area with sufficient clarity to identify employees within the cage and patrons and employees at the counter areas.

(2) Each cashier station shall be equipped with one (1) dedicated overhead camera covering the transaction area.

(3) The surveillance system shall be used as an overview for cash transactions. This overview should include the customer, the employee, and the surrounding area.

(t) *Fills and credits.* (1) The cage or vault area in which fills and credits are transacted shall be monitored and recorded by a dedicated camera or motion activated dedicated camera that provides coverage with sufficient clarity to identify the chip values and the amounts on the fill and credit slips.

(2) Controls provided by a computerized fill and credit system may

be deemed an adequate alternative to viewing the fill and credit slips.

(u) *Currency and coin.* (1) The surveillance system shall monitor and record with sufficient clarity all areas where currency or coin may be stored or counted. Audio capability of the soft count room shall also be maintained. The surveillance system shall provide for:

(i) Coverage of scales shall be sufficiently clear to view any attempted manipulation of the recorded data.

(ii) Monitoring and recording of the table game drop box storage rack or area by either a dedicated camera or a motion-detector activated camera.

(iii) Monitoring and recording of all areas where coin may be stored or counted, including the hard count room, all doors to the hard count room, all scales and wrapping machines, and all areas where uncounted coin may be stored during the drop and count process.

(iv) Monitoring and recording of soft count room, including all doors to the room, all table game drop boxes, safes, and counting surfaces, and all count team personnel. The counting surface area must be continuously monitored by a dedicated camera during the soft count.

(v) Monitoring and recording of all areas where currency is sorted, stacked, counted, verified, or stored during the soft count process.

(2) [Reserved]

(v) *Change booths.* The surveillance system shall monitor and record a general overview of the activities occurring in each gaming machine change booth.

(w) *Video recording and/or digital record retention.* (1) All video recordings and/or digital records of coverage provided by the dedicated cameras or motion-activated dedicated cameras required by the standards in this section shall be retained for a minimum of seven (7) days.

(2) Recordings involving suspected or confirmed gaming crimes, unlawful activity, or detentions by security personnel, must be retained for a minimum of 30 days.

(3) Copies of video recordings and/or digital records shall be provided to the Commission upon request. If an original is requested, the Commission shall provide written receipt to the Tribal gaming regulatory authority.

(x) *Video library log.* A video library log, or comparable alternative procedure approved by the Tribal gaming regulatory authority, shall be maintained to demonstrate compliance with the storage, identification, and retention standards required in this section.

(y) *Malfunction and repair log.* (1) Surveillance personnel shall maintain a log or alternative procedure approved by the Tribal gaming regulatory authority that documents each malfunction and repair of the surveillance system as defined in this section.

(2) The log shall state the time, date, and nature of each malfunction, the efforts expended to repair the malfunction, and the date of each effort, the reasons for any delays in repairing the malfunction, the date the malfunction is repaired, and where applicable, any alternative security measures that were taken.

(z) *Surveillance log.* (1) Surveillance personnel shall maintain a surveillance log of all surveillance activities in the surveillance room. The log shall be maintained by surveillance room personnel and shall be stored securely within the surveillance department. At a minimum, the following information shall be recorded in a surveillance log:

(i) Date;

(ii) Time commenced and terminated;

(iii) Activity observed or performed;

(iv) The name or license credential number of each person who initiates, performs, or supervises the surveillance; and

(v) Summary of the results of the surveillance of suspicious activity. The summary may be maintained in a separate log.

(2) [Reserved]

This Proposed Rule was prepared under the direction of Montie R. Deer, Chairman, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005.

Signed at Washington, DC this 6th day of December, 2001.

Montie R. Deer,

Chairman.

Elizabeth L. Homer,

Vice-Chair.

Teresa E. Poust,

Commissioner.

[FR Doc. 01–30788 Filed 12–21–01; 8:45 am]

BILLING CODE 7565–01–P

Federal Register

Wednesday,
December 26, 2001

Part III

The President

Proclamation 7515—To Modify the Harmonized Tariff Schedule of the United States, To Provide Rules of Origin Under the North American Free Trade Agreement for Affected Goods, and for Other Purposes

Federal Register
Vol. 66, No. 247
Wednesday, December 26, 2001

Presidential Documents

Title 3—

The President

Proclamation 7515 of December 18, 2001

To Modify the Harmonized Tariff Schedule of the United States, To Provide Rules of Origin Under the North American Free Trade Agreement for Affected Goods, and for Other Purposes

By the President of the United States of America

A Proclamation

1. Section 1205(a) of the Omnibus Trade and Competitiveness Act of 1988 (the "1988 Act") (19 U.S.C. 3005(a)) directs the United States International Trade Commission (the "Commission") to keep the Harmonized Tariff Schedule of the United States (HTS) under continuous review and periodically to recommend to the President such modifications in the HTS as the Commission considers necessary or appropriate to accomplish the purposes set forth in that subsection. The Commission has recommended modifications to the HTS pursuant to sections 1205(c) and (d) of the 1988 Act (19 U.S.C. 3005(c) and (d)) to conform the HTS to amendments made to the International Convention on the Harmonized Commodity Description and Coding System (the "Convention").

2. Section 1206(a) of the 1988 Act (19 U.S.C. 3006(a)) authorizes the President to proclaim modifications to the HTS, based on the recommendations of the Commission under section 1205 of the 1988 Act (19 U.S.C. 3005), if he determines that the modifications are in conformity with the obligations of the United States under the Convention and do not run counter to the national economic interest of the United States. I have determined that the modifications to the HTS proclaimed in this proclamation pursuant to section 1206(a) are in conformity with the obligations of the United States under the Convention and do not run counter to the national economic interest of the United States.

3. (a) Presidential Proclamation 6641 of December 15, 1993, implemented the North American Free Trade Agreement (the "NAFTA") with respect to the United States and, pursuant to sections 201 and 202 of the North American Free Trade Agreement Implementation Act (the "NAFTA Implementation Act") (19 U.S.C. 3331 and 3332), incorporated in the HTS the tariff modifications and rules of origin necessary or appropriate to carry out the NAFTA.

(b) Because the substance of the changes to the Convention will be reflected in slightly differing form in the national tariff schedules of the three parties to the NAFTA, the rules of origin and interpretative rules set forth in Appendix 6.A of Annex 300–B, Annex 401, and Annex 403.1 to the NAFTA must be changed to ensure that the tariff and certain other treatment accorded under the NAFTA to originating goods will continue to be provided under the tariff categories that are being modified to reflect the amendments to the Convention. The NAFTA parties have agreed to make these changes.

4. Section 202 of the NAFTA Implementation Act provides rules for determining whether goods imported into the United States originate in the territory of a NAFTA party and thus are eligible for the tariff and other treatment contemplated under the NAFTA. Section 202(q) of the NAFTA Implementation Act (19 U.S.C. 3332(q)) authorizes the President to proclaim the rules of origin set out in the NAFTA and any subordinate tariff categories

necessary to carry out the NAFTA Implementation Act consistent with the NAFTA.

5. I have determined that the modifications to the HTS proclaimed in this proclamation pursuant to sections 201 and 202 of the NAFTA Implementation Act are necessary in order to ensure that the tariff and certain other treatment accorded under the NAFTA, including previously proclaimed staged reductions in rates of duty, will continue to be given to NAFTA originating goods under tariff categories that are being modified to reflect the amendments to the Convention.

6. Presidential Proclamation 6763 of December 23, 1994, implemented with respect to the United States the trade agreements resulting from the Uruguay Round of multilateral trade negotiations, including Schedule XX-United States of America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994 ("Schedule XX"), that were entered into pursuant to sections 1102(a) and (e) of the 1988 Act (19 U.S.C. 2902(a) and (e)) and approved in section 101(a) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3511(a)).

7. Pursuant to the authority provided in section 111 of the URAA (19 U.S.C. 3521) and sections 1102(a) and (e) of the 1988 Act, Proclamation 6763 included the staged reductions in rates of duty that the President determined to be necessary or appropriate to carry out the concessions set forth in Schedule XX. In order to ensure the continuation of such staged reductions in rates of duty for imported goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed, including certain technical or conforming changes within the tariff schedule.

8. Presidential Proclamation 7351 of October 2, 2000, implemented section 211 of the United States-Caribbean Basin Trade Partnership Act (title II of Public Law 106–200, 114 Stat. 286) (CBTPA), in order to provide certain preferential tariff treatment to eligible articles that are the product of any country that the President has designated as a "CBTPA beneficiary country" and that has satisfied the requirements of section 213(b)(4)(A)(ii) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2703(b)(4)(A)(ii)). Section 213(b)(3) of the CBERA (19 U.S.C. 2703(b)(3)) provides that the tariff treatment accorded at any time under the CBTPA to any article referred to in section 213(b)(1)(B) through (F) of the CBERA (19 U.S.C. 2703(b)(1)(B) through (F)) that is a CBTPA originating good shall be identical to the tariff treatment that is accorded at such time under Annex 302.2 of the NAFTA to an article described in the same 8-digit subheading of the HTS that is a good of Mexico and is imported into the United States.

9. Pursuant to section 213(b) of the CBERA, Proclamation 7351 included the staged reductions in rates of duty that the President determined to be necessary or appropriate to provide such identical tariff treatment to CBTPA originating goods. In order to ensure the continuation of such staged reductions in rates of duty for imported goods under tariff categories that are being modified to reflect the amendments to the Convention and the conforming changes in the NAFTA rules of origin, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed.

10. Presidential Proclamation 7512 of December 7, 2001, implemented with respect to the United States the Agreement Between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area (JFTA), which was entered into on October 24, 2000, and implemented pursuant to section 101 of the United States-Jordan Free Trade Area Implementation Act (the "JFTA Act") (19 U.S.C. 2112 Note). That proclamation included the staged reductions in rates of duty that I determined to be necessary or appropriate to carry out the concessions set forth in Annex 2.1 to the JFTA. In order to ensure the continuation

of such staged reductions in rates of duty for originating goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed.

11. Section 201(b) of the NAFTA Implementation Act (19 U.S.C. 3331(b)) authorizes the President, subject to the consultation and layover requirements of section 103(a) of the NAFTA Implementation Act (19 U.S.C. 3313(a)), to proclaim accelerated schedules of duty elimination that the United States may agree to with Mexico or Canada. Consistent with Article 302(3) of the NAFTA, I, through my duly empowered representative, have entered into an agreement with the Government of Mexico providing for an accelerated schedule of duty elimination for specific goods of Mexico.

12. Pursuant to section 201(b) of the NAFTA Implementation Act, I have determined that the modifications herein proclaimed of duties on goods originating in the territory of a NAFTA party are necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Mexico provided for by the NAFTA, and to carry out the agreement with Mexico providing an accelerated schedule of duty elimination for specific goods. Pursuant to section 213(b)(3)(A) of the CBERA (19 U.S.C. 2703(b)(3)), I have determined that the rates of duty resulting from the accelerated schedule of duty elimination for specific goods of Mexico should also apply to CBTPA originating goods described in the same 8-digit subheadings of the HTS.

13. Section 604 of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including section 604 of the 1974 Act, sections 1102, 1205, and 1206 of the 1988 Act, section 213 of the CBERA, sections 201 and 202 of the NAFTA Implementation Act, section 111 of the URAA, and section 101 of the JFTA Act, do hereby proclaim:

(1) In order to modify the HTS to conform it to the Convention or any amendment thereto recommended for adoption, to promote the uniform application of the Convention, to establish additional subordinate tariff categories to carry out modifications to the rules of origin under the NAFTA, and to make technical and conforming changes to existing provisions, the HTS is modified as set forth in Annex I to this proclamation.

(2) In order to modify the rules of origin under the NAFTA to reflect the modifications to the HTS being made to conform it to the Convention and to make certain conforming changes, general note 12 to the HTS is further modified as provided in Annex II to this proclamation.

(3) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1-General subcolumn under section 111(a) of the URAA, as provided in Presidential Proclamation 6763, for goods classifiable in the provisions modified by Annex I to this proclamation that are entered, or withdrawn from warehouse for consumption, on or after each of the dates specified in section A of Annex III to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-General subcolumn for each of the HTS subheadings enumerated in section A of Annex III shall be deleted and the rate of duty provided in such section inserted in lieu thereof.

(4) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1-Special subcolumn for originating goods of Mexico under the NAFTA that are classifiable in the provisions modified by Annex I to this proclamation and entered, or withdrawn from warehouse for consumption, on or after each of the dates specified

in section B of Annex III to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn for each of the HTS subheadings enumerated in section B of Annex III shall be deleted and the rate of duty provided in such section inserted in lieu thereof.

(5) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1-Special subcolumn for originating goods of CBTPA beneficiary countries that are classifiable in the provisions modified by Annex I to this proclamation and entered, or withdrawn from warehouse for consumption, on or after each of the dates specified in section C of Annex III to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn for each of the HTS subheadings enumerated in section C of Annex III shall be deleted and the rate of duty provided in such section inserted in lieu thereof.

(6) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1-Special subcolumn for originating goods of Jordan under the JFTA that are classifiable in the provisions modified by Annex I to this proclamation and entered, or withdrawn from warehouse for consumption, on or after each of the dates specified in section D of Annex III to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn for each of the HTS subheadings enumerated in section D of Annex III shall be deleted and the rate of duty provided in such section inserted in lieu thereof.

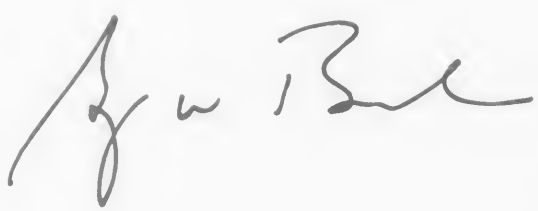
(7) In order to provide an accelerated schedule of duty elimination for specific goods of Mexico under the terms of general note 12 to the HTS, and to provide identical tariff treatment for originating goods of a CBTPA beneficiary country provided for in the same HTS subheading, the special tariff treatment set forth in the HTS for the pertinent subheadings is modified as provided in Annex IV to this proclamation.

(8) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(9)(a) The modifications and technical rectifications to the HTS made by Annexes I and II to this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the later of (i) January 1, 2002, or (ii) the 15th day after the date of publication of this proclamation in the **Federal Register**.

(b) The modifications made by Annexes III and IV to this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the respective dates specified in each section of such Annexes for the goods described therein.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of December, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



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Annex I

The Harmonized Tariff Schedule (HTS) is modified as provided in this annex, with bracketed matter included to assist in the understanding of proclaimed modifications. The following provisions supersedes matter now in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively.

Section A. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1995, the Rates of Duty 1 Special subcolumn is for subheading 2906.11.00 is modified by inserting in the parentheses following the "Free" rate in such subcolumn the symbol "K" in alphabetical order.

Section B. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the later of (i) January 1, 2002, or (ii) the fifteenth day after the date of publication of this proclamation in the Federal Register, the HTS is modified as follows:

(1). General note 4(d) is modified by deleting the following subheadings and the country set out opposite such subheadings:

8517.19.80 Indonesia	8525.20.05 Philippines
8517.21.00 Thailand	8531.20.00 Thailand
8517.80.10 Indonesia	8534.00.00 Thailand
8517.90.24 Costa Rica	8536.90.40 Argentina

(2). Subheadings 0101.11.00 through 0101.20.40 and any intervening text or text immediately preceding such subheadings are superseded by:

	:[Live horses, asses, mules and hinnies:]	:	:	:
"0101.10.00	: Purebred breeding animals	: Free	:	: Free
0101.90	: Other:	:	:	:
0101.90.10	: Horses	: Free	:	: 20%
0101.90.20	: Asses	: 6.8%	: Free (A+,CA,D,E, IL,J,MX) [See Annex III(D)2 to this proclamation](JO)	: 15%
	: Mules and hinnies:	:	:	:
0101.90.30	: Imported for immediate slaughter	: Free	:	: Free
0101.90.40	: Other	: 4.5%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 20%"

(3). Heading 0106.00 and all subordinate subheadings and text thereto are superseded by:

"0106	: Other live animals:	:	:	:
	: Mammals:	:	:	:
0106.11.00	: Primates	: Free	:	: 15%
0106.12.00	: Whales, dolphins and porpoises (mammals of: the order Cetacea); manatees and dugongs (mammals of the order Sirenia)	: Free	:	: 15%

Annex I (continued)
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	:[Other live animals:]	:	:	:
	: [Mammals:]	:	:	:
0106.19	: Other:	:	:	:
0106.19.30	: Foxes	: 4.8%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 15%
0106.19.90	: Other	: Free	:	: 15%
0106.20.00	: Reptiles (including snakes and turtles)	: Free	:	: 15%
	: Birds:	:	:	:
0106.31.00	: Birds of prey	: 1.8%	: Free (A,CA,E,IL,J, JO,MX)	: 20%
0106.32.00	: Psittaciformes (including parrots, parakeets, macaws and cockatoos)	: 1.8%	: Free (A,CA,E,IL,J, JO,MX)	: 20%
0106.39.00	: Other	: 1.8%	: Free (A,CA,E,IL,J, JO,MX)	: 20%
0106.90.00	: Other	: Free	:	: 15%"

(4)(a). The following subheadings are inserted in numerical sequence:

	:[Other meat and edible meat offal, fresh,...]	:	:	:
"0208.30.00	: Of primates	: 6.4%	: Free (A+,CA,D,E, IL,J,MX) [See Annex III(D)2 to this proclamation](JO)	: 20%
0208.40.00	: Of whales, dolphins and porpoises (mammals of the order Cetacea); of manatees and dugongs (mammals of the order Sirenia)	: 6.4%	: Free (A+,CA,D,E, IL,J,MX) [See Annex III(D)2 to this proclamation](JO)	: 20%
0208.50.00	: Of reptiles (including snakes and turtles)	: 6.4%	: Free (A+,CA,D,E, IL,J,MX) [See Annex III(D)2 to this proclamation](JO)	: 20%"

(b). Subheading 0208.90.40 is renumbered as 0208.90.90.

(5). Subheadings 0210.90, 0210.90.20 and 0210.90.40 are superseded by:

	:[Meat and edible meat offal, salted, in brine,...]	:	:	:
	: "Other, including edible flours and meals of meat and meat offal:	:	:	:
0210.91.00	: Of primates	: 2.3%	: Free (A,CA,E,IL, J,JO,MX)	: 20%
0210.92.00	: Of whales, dolphins and porpoises (mammals: of the order Cetacea); of manatees and dugongs (mammals of the order Sirenia)	: 2.3%	: Free (A,CA,E,IL, J,JO,MX)	: 20%
0210.93.00	: Of reptiles (including snakes and turtles)	: 2.3%	: Free (A,CA,E,IL, J,JO,MX)	: 20%
0210.99	: Other:	:	:	:
0210.99.20	: Meat of poultry of heading 0105	: 2.3%	: Free (A,CA,E,IL,J, JO,MX)	: 20%
0210.99.90	: Other	: 2.3%	: Free (A,CA,E,IL, J,JO,MX)	: 20%"

Annex I (continued)
-3-

(6). Note 1 to chapter 3 is modified by:
(a). deleting subdivision (a);
(b). redesignating subdivisions (b) and (c) as (c) and (d), respectively; and
(c). inserting the following subdivisions in alphabetical sequence:

"(a) Mammals of heading 0106;

(b) Meat of mammals of heading 0106 (heading 0208 or 0210);"

(7). Subheading 0302.39.00 is superseded by:

	:[Fish, fresh or chilled, excluding fish fillets...]	:	:
	: [Tunas (of genus Thunnus),...]	:	:
"0302.34.00	: Bigeye tunas (Thunnus obesus)	: Free	: Free
0302.35.00	: Bluefin tunas (Thunnus thynnus)	: Free	: Free
0302.36.00	: Southern bluefin tunas (Thunnus maccoyii)	: Free	: Free
0302.39.01	: Other	: Free	: Free"

(8). Subheadings 0303.10.00 is superseded by:

	:[Fish, frozen, excluding fish fillets and other...]	:	:
	: "Pacific salmon (Oncorhynchus nerka, Oncorhynchus	:	:
	: gorbuscha, Oncorhynchus keta, Oncorhynchus	:	:
	: tschawytscha, Oncorhynchus kisutch, Oncorhynchus	:	:
	: masou and Oncorhynchus rhodurus), excluding livers	:	:
	: and roes:	:	:
0303.11.00	: Sockeye salmon (red salmon) (Oncorhynchus:	:	:
	: nerka)	: Free	: 4.4¢/kg
	:	:	:
0303.19.00	: Other	: Free	: 4.4¢/kg"

(9). Subheading 0303.49.00 is superseded by:

	:[Fish, frozen, excluding fish fillets and other...]	:	:
	: [Tunas (of the genus Thunnus),...]	:	:
"0303.44.00	: Bigeye tunas (Thunnus obesus)	: Free	: Free
0303.45.00	: Bluefin tunas (Thunnus thynnus)	: Free	: Free
0303.46.00	: Southern bluefin tunas (Thunnus maccoyii)	: Free	: Free
0303.49.01	: Other	: Free	: Free"

(10). The article description of subheading 0305.20 is modified to read:

"Livers and roes of fish, dried, salted or in brine:"

(11). Note 3 to chapter 5 is superseded by:"

"3. Throughout the tariff schedule, elephant, hippopotamus, walrus, narwhal and wild boar tusks, rhinoceros horns and the teeth of all animals are regarded as "ivory"."

Annex I (continued)
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(12). Subheading 0709.51.00 is superseded and the following subheadings are inserted in numerical sequence:

	:[Other vegetables, fresh or chilled:]			
	: [Mushrooms and truffles:]			
"0709.51.01	: Mushrooms of the genus Agaricus	: 8.8¢/kg + 20%	: Free (A+,CA,D,E, IL,J,JO) [See Annex III(B) to this proclamation](MX)	: 22¢/kg + 45%
0709.59.00	: Other	: 8.8¢/kg + 20%	: Free (A+,CA,D,E, IL,J,JO) [See Annex III(B) to this proclamation](MX)	: 22¢/kg + 45%"

(13)(a). Subheadings 0711.10.00 and 0711.90.40 are deleted.

(b). The following provisions are inserted in numerical sequence:

	:[Vegetables provisionally preserved (for...]			
	: "Mushrooms and truffles:			
0711.51.00	: Mushrooms of the genus Agaricus	: 5.7¢/kg on drained weight + 8%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 22¢/kg on drained weight + 45%
0711.59	: Other:			
0711.59.10	: Mushrooms	: 5.7¢/kg on drained weight + 8%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 22¢/kg on drained weight + 45%
0711.59.90	: Other	: 7.7%	: Free (A,CA,E,IL,J, JO,MX)	: 35%
	: [Other vegetables; mixtures of...]			
0711.90.50	: Onions	: 5.1%	: Free (A,CA,E,IL,J, JO,MX)	: 35%"

(c). Subheading 0711.90.60 is renumbered as 0711.90.65.

(14)(a). Subheadings 0712.30 through 0712.30.40 and any intervening text to such subheadings are superseded by:

	:[Dried vegetables, whole, cut, sliced, broken or...]			
	: "Mushrooms, wood ears (Auricularia spp.), jelly fungi (Tremella spp.) and truffles:			
0712.31	: Mushrooms of the genus Agaricus:			
0712.31.10	: Air dried or sun dried	: 1.3¢/kg + 1.8%	: Free (A,CA,E,IL,J, JO,MX)	: 22¢/kg + 45%
0712.31.20	: Other	: 1.9¢/kg + 2.6%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 22¢/kg + 45%
0712.32.00	: Wood ears (Auricularia spp.)	: 8.3%	: Free (A,CA,E,IL,J, MX) [See Annex III(D)2 to this proclamation](JO)	: 35%
0712.33.00	: Jelly fungi (Tremella spp.)	: 8.3%	: Free (A,CA,E,IL,J, MX) [See Annex III(D)2 to this proclamation](JO)	: 35%

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	:[Dried vegetables, whole, cut, sliced, broken or...]			
	: [Mushrooms, wood ears...]			
0712.39	: Other:			
	: Mushrooms:			
0712.39.10	: Air dried or sun dried	: 1.3¢/kg + 1.8%	: Free (A,CA,E,IL,J, JO,MX)	: 22¢/kg + 45%
0712.39.20	: Other	: 1.9¢/kg + 2.6%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 22¢/kg + 45%
0712.39.40	: Truffles	: Free		: Free"

(b). Subheading 0712.90.80 is renumbered as 0712.90.85.

(15)(a). Subheadings 0714.90.45, 0714.90.50 and 0714.90.60 are superseded and the following provisions are inserted in numerical sequence with the superior text "Frozen:" inserted following subheading 0714.90.40:

	:[Cassava (manioc), arrowroot, salep, Jerusalem...]			
	: [Other:]			
	: [Fresh or chilled:]			
"0714.90.05	: Chinese water chestnuts	: 20%	: Free (A+,CA,D,E, IL,J,JO) : [See Annex III(B) : to this : proclamation](MX)	: 50%
	: Frozen:			
0714.90.41	: Mixtures of pea pods and Chinese water chestnuts	: 7.9%	: Free (A,CA,E,IL,J, JO,MX)	: 35%
0714.90.42	: Other mixtures of Chinese water chestnuts	: 14%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 35%
0714.90.44	: Chinese water chestnuts, not mixed	: Free		: 35%
0714.90.45	: Other	: 6%	: Free (A*,CA,E,IL,J, MX) : [See Annex III(D)2 : to this : proclamation](JO)	: 35%
	: [Other:]			
0714.90.48	: Chinese water chestnuts	: 8.3%	: Free (A,CA,E,IL,J, MX) : [See Annex III(D)2 : to this : proclamation](JO)	: 35%
	: Other:			
0714.90.50	: In the form of pellets	: Free		: Free
0714.90.60	: Other	: 8.3%	: Free (A,CA,E,IL,J, MX) : [See Annex III(D)2 : to this : proclamation](JO)	: 35%"

(b). Subheading 0709.90.90 is renumbered as 0709.90.91.

(c). Subheading 0710.80.10 is renumbered as 0710.80.15 and the article description is modified to read:

"Bamboo shoots and water chestnuts, other than Chinese water chestnuts"

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(d). Subheading 0710.90.10 is renumbered as 0710.90.11 and the article description is modified to read:

"Mixtures of pea pods and water chestnuts, other than Chinese water chestnuts"

(e). Subheading 0710.90.90 is renumbered as 0710.90.91.

(f). Conforming change: The superior text preceding subheading 9906.07.50 which reads "Provided for in subheading 0709.90.90" is modified by deleting "0709.90.90" and inserting "0709.90.91" in lieu thereof.

(16)(a). Subheadings 0805.30, 0805.30.20 and 0805.30.40 are superseded and the following provisions inserted in numerical sequence:

	:[Citrus fruit, fresh or dried:]			
"0805.50	: Lemons (Citrus limon, Citrus limonum) and limes (Citrus aurantifolia, Citrus latifolia):			
0805.50.20	: Lemons	: 2.2¢/kg	: Free (A+,CA,D,E, IL,J,JO) [See Annex III(B) to this proclamation](MX)	: 5.5¢/kg
	: Limes:			
0805.50.30	: Tahitian limes, Persian limes and other limes of the Citrus aurantifolia variety	: 0.8%	: Free (A*,CA,E,IL, J,JO,MX)	: 35%
0805.50.40	: Other	: 1.8¢/kg	: Free (A,CA,E,IL,J) [See Annex III(B) to this proclamation](MX) [See Annex III(D)2 to this proclamation](JO)	: 4.4¢/kg"

(b). Subheading 0805.90.00 is renumbered as 0805.90.01.

(c). General note 4 (d) is modified by:

(A). deleting the following subheading and the countries set out opposite such subheading:

0805.90.00 Jamaica;
Turkey

(B). adding, in numerical sequence, the following subheadings and countries set out opposite them:

0805.50.30 Jamaica;
Turkey
0805.90.01 Jamaica;
Turkey

(17)(a). The following subheading is inserted in numerical sequence:

	:[Other fruit, fresh:]			
"0810.60.00	: Durians	: 2.2%	: Free (A,CA,E,IL,J, JO,MX)	: 35%"

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(b). Subheading 0810.90.40 is renumbered as 0810.90.45.

(18). Subheading 0812.20.00 is deleted and the following subheading is inserted in numerical sequence:

	:[Fruit and nuts, provisionally preserved...]	:	:	:
	: [Other:]	:	:	:
	: [Other:]	:	:	:
"0812.90.50	: Strawberries	: 0.8¢/kg	: Free (A+,CA,D,E, IL,J,JO,MX)	: 2.8¢/kg"

(19). Note 1(b) to chapter 11 is superseded by:

"(b) Prepared flours, groats, meals or starches of heading 1901;"

(20)(a). Subheadings 1103.12.00 and 1103.14.00 are deleted.

(b). Subheadings 1103.19.00 through 1103.29.00 and any intervening text to such subheadings are superseded by:

	:[Cereal groats, meal and pellets:]	:	:	:
	: [Groats and meal:]	:	:	:
"1103.19	: Of other cereals:	:	:	:
1103.19.12	: Of oats	: 0.8¢/kg	: Free (A,CA,E,IL,J, JO,MX)	: 1.8¢/kg
1103.19.14	: Of rice	: 0.09¢/kg	: Free (A,CA,E,IL, J,JO,MX)	: 1.4¢/kg
1103.19.90	: Of other cereals	: 9%	: Free (A+,CA,D,E, IL,J,MX) : [See Annex III(D)2 to this proclamation](JO)	: 20%
1103.20.00	: Pellets	: Free	:	: 10%"

(21)(a). Subheadings 1104.11.00 and 1104.21.00 are deleted.

(b). Subheadings 1104.19.00 and 1104.29.00 are superseded by:

	:[Cereal grains otherwise worked (for example,...]	:	:	:
	: [Rolled or flaked grains:]	:	:	:
"1104.19	: Of other cereals:	:	:	:
1104.19.10	: Of barley	: 2¢/kg	: Free (A+,CA,D,E, IL,J,JO,MX)	: 4.4¢/kg
1104.19.90	: Other	: 0.45¢/kg	: Free (A+,CA,D,E, IL,J,JO,MX)	: 1¢/kg
	: [Other worked grains (for example,...]	:	:	:
1104.29	: Of other cereals:	:	:	:
1104.29.10	: Of barley	: 1.2%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 17%
1104.29.90	: Other	: 2.7%	: Free (A,CA,E,IL,J, JO,MX)	: 20%"

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(22). Subheading 1106.20.00 is superseded by:

	[Flour, meal and powder of the dried...]			
"1106.20	Of sago or of roots or tubers of heading 0714:			
1106.20.10	Of Chinese water chestnuts	8.3%	Free (A,CA,E,IL,J, MX) [See Annex III(D)2 to this proclamation](JO)	35%
1106.20.90	Other	Free		Free"

(23). The following subheading note and title to chapter 12 are inserted before the U.S. additional note:

"Subheading Note

1. For the purposes of subheading 1205.10, the expression "low erucic acid rape or colza seeds" means rape or colza seeds yielding a fixed oil which has an erucic acid content of less than 2 percent by weight and yielding a solid component which contains less than 30 micromoles of glucosinolates per gram."

(24). Heading 1205.00.00 is superseded by:

"1205	Rape or colza seeds, whether or not broken:			
1205.10.00	Low erucic acid rape or colza seeds	0.58¢/kg	Free (A+,CA,D,E, IL,J,JO,MX)	4.4¢/kg
1205.90.00	Other	0.58¢/kg	Free (A+,CA,D,E, IL,J,JO,MX)	4.4¢/kg"

(25)(a). Subheading 1207.92.00 is deleted.
(b). Subheading 1207.99.00 is renumbered as 1207.99.01.

(26)(a). The article description of the superior text immediately preceding subheading 1209.21.00 is modified to read:

"Seeds of forage plants:"

(b). Subheadings 1209.11.00 and 1209.19.00, the superior text immediately preceding 1209.11.00, and subheading 1209.29.00 are superseded and the following provisions are inserted in numerical sequence:

	[Seeds, fruits and spores of a kind used...]			
"1209.10.00	Sugar beet seed	Free		Free
	[Seeds of forage plants:]			
1209.29	Other:			
1209.29.10	Beet	Free		9¢/kg
1209.29.90	Other	Free		8%"

(27)(a). The following subheadings are inserted in numerical sequence:

	[Plants and parts of plants (including seeds and...]			
"1211.30.00	Coca leaf	Free		Free
1211.40.00	Poppy straw	Free		Free"

(b). Subheading 1211.90.80 is renumbered as 1211.90.90.

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(28)(a). Subheading 1212.92.00 is deleted.

(b). Subheadings 1212.30.00 and 1212.99.00 are superseded by:

	:[Locust beans, seaweeds and other algae, sugar...]	:	:	:
"1212.30	: Apricot, peach (including nectarine) or plum	:	:	:
	: stones and kernels:	:	:	:
1212.30.10	: Nectarine	: Free	:	: 4.4¢/kg
1212.30.90	: Other	: 1.5¢/kg	: Free (A+,CA,D,E, IL,J,JO,MX)	: 6.6¢/kg
	:	:	:	:

	:[Locust beans, seaweeds and other algae, sugar...]	:	:	:
	: [Other:]	:	:	:
1212.99	: Other:	:	:	:
1212.99.10	: Sugar cane	: $1.24/t	: Free (A,CA,E,IL,J, MX) [See Annex III(D)2 to this proclamation](JO)	: $2.76/t
1212.99.90	: Other	: Free	:	: 4.4¢/kg"

(29)(a). Notes 1(f) to 1(ij) to chapter 13 are redesignated as notes 1(g) to 1(k), respectively.

(b). The following subdivision to note 1 of chapter 13 is inserted in alphabetical sequence:

"(f) Concentrates of poppy straw containing not less than 50 percent by weight of alkaloids (heading 2939);"

(30). Heading 1402 and all subordinate subheadings and text thereto are superseded by:

"1402.00	:Vegetable materials of a kind used primarily as stuffing or :as padding (for example, kapok, vegetable hair and :eel-grass), whether or not put up as a layer with or without :supporting material:	:	:	:
1402.00.91	: Vegetable hair	: 0.5¢/kg	: Free (A+,CA,D,E, IL,J,JO,MX)	: 2.2¢/kg
1402.00.99	: Other	: Free	:	: 20%"

(31)(a). Heading 1403 and all subordinate subheadings and text thereto are superseded by:

"1403.00	:Vegetable materials of a kind used primarily in brooms or :in brushes (for example, broomcorn, piassava, couch :grass and istle), whether or not in hanks or bundles:	:	:	:
1403.00.10	: Broomcorn (Sorghum vulgare var. technicum)	: $4.95/t	: Free (A+,CA,D,E, IL,J,JO,MX)	: $22/t
1403.00.92	: Istle	: Free	:	: Free
1403.00.94	: Other	: 2.3%	: Free (A*,CA,E,IL, J,JO,MX)	: 20%"

(b). Conforming change: General note 4(d) is modified by deleting "1403.90.40 India" and inserting "1403.00.94 India" in lieu thereof.

(32). The following subheading note and title to chapter 15 are inserted before the additional U.S. note:

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"Subheading Note

1. For the purposes of subheadings 1514.11.00 and 1514.19.00, the expression "low erucic acid rape or colza oil" means the fixed oil which has an erucic acid content of less than 2 percent by weight."

(33)(a). Heading 1505 and all subordinate subheadings and text thereto are superseded by:

"1505.00	:Wool grease and fatty substances derived therefrom :(including lanolin):	:	:	:
1505.00.10	: Wool grease, crude	: 1.3¢/kg	: Free (A,CA,E,IL,J, JO,MX)	: 9.5¢/kg
1505.00.90	: Other	: 2.4%	: Free (A,CA,E,IL,J, JO,MX)	: 27%"

(b). Conforming change: The article description of subheading 9903.02.44 is modified by deleting "1505.90" and inserting "1505.00.90" in lieu thereof.

(34). Subheadings 1514.10 through 1514.90.90 and any intervening text to such subheadings are superseded by:

	:[Rapeseed, colza or mustard oil, and fractions...]	:	:	:
	: "Low erucic acid rape or colza oil and its fractions:	:	:	:
1514.11.00	: Crude oil	: 6.4%	: Free (A+,CA,D,E, IL,J,MX) :[See Annex III(D)2 to this proclamation](JO)	: 22.5%
1514.19.00	: Other	: 6.4%	: Free (A+,CA,D,E, IL,J,MX) :[See Annex III(D)2 to this proclamation](JO)	: 22.5%
	: Other:	:	:	:
1514.91	: Crude oil:	:	:	:
1514.91.10	: Imported to be used in the manufacture of rubber substitutes or lubricating oil	: Free	:	: 1.8¢/kg
1514.91.90	: Other	: 6.4%	: Free (A+,CA,D,E, IL,J,MX) :[See Annex III(D)2 to this proclamation](JO)	: 22.5%
1514.99	: Other:	:	:	:
1514.99.10	: Imported to be used in the manufacture of rubber substitutes or lubricating oil	:Free	:	: 1.8¢/kg
	: Other:	:	:	:
1514.99.50	: Denatured	: 1.3¢/kg	: Free (A+,CA,D,E, IL,J,JO,MX)	: 9.92¢/kg
1514.99.90	: Other	: 6.4%	: Free (A+,CA,D,E, IL,J,MX) :[See Annex III(D)2 to this proclamation](JO)	: 22.5%"

(35)(a). Subheading 1515.60.00 is deleted.
(b). Subheading 1515.90.40 is renumbered as 1515.90.80.

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(c). The following subheading is inserted in numerical sequence:

	:[Other fixed vegetable fats and oils (including...]	:	:	:
	: [Other:]	:	:	:
"1515.90.60	: Jojoba oil and its fractions.....	: 2.3%	: Free (A,CA,E,IL,J, JO,MX)	: 20%"

(36). Additional U.S. note 1 to chapter 17 is superseded by:

"1. The term "degree" as used in the "Rates of Duty" columns of this chapter means sugar degree as determined by a polarimetric test."

(37). The article description of subheading 1702.40 is modified to read:

"Glucose and glucose syrup, containing in the dry state at least 20 percent but less than 50 percent by weight of fructose, excluding invert sugar:"

(38). The article description of subheading 1702.60 is modified to read:

"Other fructose and fructose syrup, containing in the dry state more than 50 percent by weight of fructose, excluding invert sugar:"

(39). The article description of subheading 1702.90 is modified to read:

"Other, including invert sugar and other sugar and sugar syrup blends containing in the dry state 50 percent by weight of fructose:"

(40). Note 2 to chapter 19 is superseded by:

"2. For the purposes of heading 1901:

(a) The term "groats" means cereal groats of chapter 11;

(b) The terms "flour" and "meal" mean:

(1) Cereal flour and meal of chapter 11, and

(2) Flour, meal and powder of vegetable origin of any chapter, other than flour, meal or powder of dried vegetables (heading 0712), of potatoes (heading 1105) or of dried leguminous vegetables (heading 1106)."

(41). The article description of heading 1901 is modified by deleting "preparations of flour, meal" and inserting "preparations of flour, groats, meal" in lieu thereof.

(42). The article description of heading 1904 is modified by deleting "(except flour and meal)" and inserting "(except flour, groats and meal)" in lieu thereof.

(43)(a). The following subheading is inserted in numerical sequence:

	:[Prepared foods obtained by the swelling or...]	:	:	:
"1904.30.00	: Bulgur wheat.....	: 14%	: Free (A,CA,E,IL,J, MX)	: 35%"
	:	:	: [See Annex III(D)2	:
	:	:	: to this	:
	:	:	: proclamation](JO)	:

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(b). Subheading 1904.90.00 is renumbered as 1904.90.01.

(44). Subheading 1905.30.00 is superseded by:

	:[Bread, pastry, cakes, biscuits and other bakers'...]	:	:	:
	: "Sweet biscuits; waffles and wafers:	:	:	:
1905.31.00	: Sweet biscuits	: Free	:	: 30%
1905.32.00	: Waffles and wafers	: Free	:	: 30%"

(45)(a). Note 5 to chapter 20 is redesignated as note 6.
(b). The following note to chapter 20 is inserted in numerical sequence:

"5. For the purposes of heading 2007, the expression "obtained by cooking" means obtained by heat treatment at atmospheric pressure or under reduced pressure to increase the viscosity of a product through reduction of water content or other means."

(46.) The following subheading note to chapter 20 is inserted in numerical sequence:

"3. For the purposes of subheadings 2009.12, 2009.21, 2009.31, 2009.41, 2009.61.00 and 2009.71.00, the expression "Brix value" means the direct reading of degrees Brix obtained from a Brix hydrometer or of refractive index expressed in terms of percentage sucrose content obtained from a refractometer, at a temperature of 20°C or corrected for 20°C if the reading is made at a different temperature."

(47)(a). Subheading 2001.20.00 is deleted.
(b). The following subheadings are inserted in numerical sequence:

	:[Vegetables, fruit, nuts and other edible parts...]	:	:	:
	: [Other:]	:	:	:
	: [Other:]	:	:	:
	: [Vegetables:]	:	:	:
"2001.90.34	: Onions	: 3.6%	: Free (A,CA,E,IL,J, JO,MX)	: 35%
2001.90.48	: Chinese water chestnuts	: 9.6%	: Free (A,CA,E,IL,J, JO,MX)	: 35%"

(c). Subheading 2001.90.39 is renumbered as 2001.90.38.
(d). The article description for subheading 2001.90.42 is modified to read:

"Chestnuts, other than Chinese water chestnuts"

(48). Subheading 2003.10.00 is superseded and the following subheadings inserted in numerical sequence:

	:[Mushrooms and truffles, prepared or...]	:	:	:
"2003.10.01	: Mushrooms of the genus Agaricus	: 6¢/kg drained weight + 8.5%	: Free (A+,CA,D,E, IL,J,JO) [See Annex III(B) to this proclamation](MX)	: 22¢/kg on drained weight + 45%
2003.90.00	: Other	: 6¢/kg drained weight + 8.5%	: Free (A+,CA,D,E, IL,J,JO) [See Annex III(B) to this proclamation](MX)	: 22¢/kg on drained weight + 45%"

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(49). The article description of heading 2007 is modified by deleting "being cooked preparations," and inserting "obtained by cooking," in lieu thereof.

(50)(a). The superior text immediately preceding subheading 2008.30.60 is modified to read:

"Lemons (Citrus limon, Citrus limonum) and limes (Citrus aurantifolia, Citrus latifolia):"

(b). Subheadings 2008.30.65 and 2008.30.95 are renumbered as 2008.30.66 and 2008.30.96, respectively.

(51)(a). Subheading 2008.70.00 is superseded by:

	[Fruit, nuts and other edible parts of plants,...]			
"2008.70	Peaches, including nectarines:			
2008.70.10	Nectarines	16%	Free (A+,CA,D,E, IL,J) [See Annex III(B) to this proclamation](MX) [See Annex III(D)2 to this proclamation](JO)	35%
2008.70.20	Other peaches	17%	Free (A+,CA,E,IL, J) [See Annex III(B) to this proclamation](MX) [See Annex III(D)2 to this proclamation](JO)	35%"

(b). Subheading 2008.99.42 is deleted.

(52)(a). The following subheadings are inserted in numerical sequence:

	[Fruit, nuts and other edible parts of plants,...]			
	[Other, including mixtures other than those...]			
	[Other:]			
	"Chinese water chestnuts:			
2008.99.70	Frozen	11.2%	Free (A+,CA,D,E, IL,J,JO) [See Annex III(B) to this proclamation](MX)	35%
2008.99.71	Other	Free		35%"

(b). Subheading 2004.90.90 is renumbered as 2004.90.85.

(c). Subheading 2005.90.40 is renumbered as 2005.90.41 and the article description is modified to read:

"Water chestnuts, other than Chinese water chestnuts"

(53)(a). Subheadings 2009.19 through 2009.40.40, 2009.60.00 and 2009.70.00 and any intervening text to such subheadings are superseded by:

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	:[Fruit juices (including grape must) and...]			
	: [Orange juice:]			
*2009.12	: Not frozen, of a Brix value not exceeding 20:			
2009.12.25	: Not concentrated and not made from a juice having a degree of concentration of 1.5 or more (as determined before correction to the nearest 0.5 degree).....	: 4.5¢/liter	: Free (CA,D,E,IL,J, JO) :[See Annex III(B) to this proclamation)(MX)	: 18¢/liter
2009.12.45	: Other.....	: 7.85¢/liter	: Free (CA,D,E,IL,J, JO) :[See Annex III(B) to this proclamation)(MX)	: 18¢/liter
2009.19.00	: Other.....	: 7.85¢/liter	: Free (CA,D,E,IL,J, JO) :[See Annex III(B) to this proclamation)(MX)	: 18¢/liter
	: Grapefruit juice:			
2009.21	: Of a Brix value not exceeding 20:			
2009.21.20	: Not concentrated and not made from a juice having a degree of concentration of 1.5 or more (as determined before correction to the nearest 0.5 degree).....	: 4.5¢/liter	: Free (CA,D,E,IL,J) :[See Annex III(B) to this proclamation)(MX) :[See Annex III(D)2 to this proclamation)(JO)	: 18¢/liter
2009.21.40	: Other.....	: 7.9¢/liter	: Free (CA,D,E,IL,J) :[See Annex III(B) to this proclamation)(MX) :[See Annex III(D)2 to this proclamation)(JO)	: 18¢/liter
2009.29.00	: Other.....	: 7.9¢/liter	: Free (CA,D,E,IL,J) :[See Annex III(B) to this proclamation)(MX) :[See Annex III(D)2 to this proclamation)(JO)	: 18¢/liter
	: Juice of any other single citrus fruit:			
2009.31	: Of a Brix value not exceeding 20:			
	: Lime:			
2009.31.10	: Unfit for beverage purposes.....	: 1.8¢/kg	: Free (A*,CA,E,IL, J,JO,MX)	: 11¢/kg
2009.31.20	: Other.....	: 1.7¢/liter	: Free (A,CA,E,IL,J, MX) :[See Annex III(D)2 to this proclamation)(JO)	: 18¢/liter
	: Other:			
2009.31.40	: Not concentrated.....	: 3.4¢/liter	: Free (CA,D,E,IL,J, JO) :[See Annex III(B) to this proclamation)(MX)	: 18¢/liter

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	[Fruit juices (including grape must) and...]			
	[Juice of any other single citrus fruit:]			
	[Of a Brix value not exceeding 20:]			
	[Other:]			
2009.31.60	Concentrated	7.9¢/liter	Free (CA,D,E,IL,J) [See Annex III(B) to this proclamation](MX) [See Annex III(D)2 to this proclamation](JO)	18¢/liter
2009.39	Other:			
	Lime:			
2009.39.10	Unfit for beverage purposes	1.8¢/kg	Free (A*,CA,E,IL, J,JO,MX)	11¢/kg
2009.39.20	Other	1.7¢/liter	Free (A,CA,E,IL,J, MX) [See Annex III(D)2 to this proclamation](JO)	18¢/liter
2009.39.60	Other	7.9¢/liter	Free (CA,D,E,IL,J) [See Annex III(B) to this proclamation](MX) [See Annex III(D)2 to this proclamation](JO)	18¢/liter
	Pineapple juice:			
2009.41	Of a Brix value not exceeding 20:			
2009.41.20	Not concentrated, or having a degree of concentration of not more than 3.5 (as determined before correction to the nearest 0.5 degree)	4.2¢/liter	Free (A+,CA,D,E, IL,J) [See Annex III(B) to this proclamation](MX) [See Annex III(D)2 to this proclamation](JO)	18¢/liter
2009.41.40	Other	1¢/liter	Free (A+,CA,D,E, IL,J,JO,MX)	18¢/liter
2009.49	Other:			
2009.49.20	Not concentrated, or having a degree of concentration of not more than 3.5 (as determined before correction to the nearest 0.5 degree)	4.2¢/liter	Free (A+,CA,D,E, IL,J) [See Annex III(B) to this proclamation](MX) [See Annex III(D)2 to this proclamation](JO)	18¢/liter
2009.49.40	Other	1¢/liter	Free (A+,CA,D,E, IL,J,JO,MX)	18¢/liter

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	:[Fruit juices (including grape must) and...]	:	:	:
	: Grape juice (including grape must):	:	:	:
2009.61.00	: Of a Brix value not exceeding 30	: 4.4¢/liter	: Free (A+,CA,D,E, IL,J,JO) [See Annex III(B) to this proclamation](MX)	: 26¢/liter
2009.69.00	: Other	: 4.4¢/liter	: Free (A+,CA,D,E, IL,J,JO) [See Annex III(B) to this proclamation](MX)	: 26¢/liter
	: Apple juice:	:	:	:
2009.71.00	: Of a Brix value not exceeding 20	: Free	:	: 1.3¢/liter
2009.79.00	: Other	: Free	:	: 1.3¢/liter"

(b). Conforming changes:

(A). General note 4(d) is modified by deleting "2009.30.10 Honduras" and inserting "2009.31.10 Honduras" and "2009.39.10 Honduras" in lieu thereof.

(B). General note 18(e)(ii) is modified by deleting "2009.30" and inserting "2009.39" in lieu thereof.

(C). Note 22 to subchapter VI of chapter 99 is deleted and subheadings 9906.20.08 and 9906.20.09 and the superior text to 9906.20.08 are deleted.

(54)(a). The following subheading is inserted in numerical sequence:

	:[Food preparations not elsewhere specified or...]	:	:	:
	: [Other:]	:	:	:
"2106.90.39	: Artificially sweetened cough drops	: Free	:	: 30%"

(b). Subheading 3004.90.90 is renumbered as 3004.90.91.

(55). The following subheading note and title to chapter 23 are inserted before the additional U.S. note:

"Subheading Note

1. For the purposes of subheading 2306.41.00, the expression "low erucic acid rape or colza seed" means seeds as defined in subheading note 1 to chapter 12."

(56). Subheading 2306.40.00 is superseded by:

	:[Oilcake and other solid residues, whether or not...]	:	:	:
	: "Of rape or colza seeds:	:	:	:
2306.41.00	: Of low erucic acid rape or colza seeds	: 0.17¢/kg	: Free (A,CA,E,IL,J, JO,MX)	: 0.7¢/kg
2306.49.00	: Other	: 0.17¢/kg	: Free (A,CA,E,IL,J, JO,MX)	: 0.7¢/kg"

(57). Heading 2308 and all subordinate subheadings and text thereto are superseded by:

"2308.00	: Vegetable materials and vegetable waste, vegetable residues and byproducts, whether or not in the form of pellets, of a kind used in animal feeding, not elsewhere specified or included:	:	:	:
2308.00.10	: Acorns and horse-chestnuts	: 1.4%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 20%

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	:[Vegetable materials and...]	:	:	:
2308.00.93	: Screenings, scalpings, chaff or scourings, ground,	:	:	:
	: or not ground, of flaxseed (linseed)	: Free	:	: 10%
	:	:	:	:
2308.00.95	: Dehydrated marigolds	: 1.9%	: Free (A,CA,E,IL,J,	: 20%
	:	:	: JO,MX)	:
2308.00.98	: Other	: 1.4%	: Free (A+,CA,D,E,	: 20%"
	:	:	: IL,J,JO,MX)	:

(58). Note 4 to chapter 25 is modified by deleting "broken pottery." and inserting "broken pieces of pottery, brick or concrete.".

(59)(a). The article description of heading 2518 is modified to read:

"Dolomite whether or not calcined or sintered, including dolomite roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape; dolomite ramming mix:"

(b). The article description of subheading 2518.10.00 is modified to read

"Dolomite, not calcined or sintered"

(c). The article description of subheading 2518.20.00 is modified to read:

"Calcined or sintered dolomite"

(d). The article description of subheading 2518.30.00 is modified to read:

"Dolomite ramming mix"

(60)(a). Heading 2527.00.00 and subheading 2530.40.00 are deleted.
(b). Subheading 2530.90.00 is superseded by:

	:[Mineral substances not elsewhere specified or...]	:	:	:
"2530.90	: Other:	:	:	:
2530.90.10	: Natural cryolite; natural chiolite	: Free	:	: Free
2530.90.20	: Natural micaceous iron oxides	: 2.9%	: Free (A,CA,E,IL,J,	: 20%
	:	:	: JO,MX)	:
2530.90.80	: Other	: Free	:	: 0.3¢/kg"

(61). Notes 1(c) to 1(f) to chapter 26 are redesignated as 1(d) to 1(g), respectively, and the following note to chapter 26 is inserted in alphabetical sequence:

"(c) Sludges from the storage tanks of petroleum oils, consisting mainly of such oils (heading 2710);"

(62). Note 3 to chapter 26 is superseded by:

"3. Heading 2620 applies only to:

Ash and residues of a kind used in industry either for the extraction of metals or as a basis for the manufacture of chemical compounds of metals, excluding ash and residues from the incineration of municipal waste (heading 2621); and

Ash and residues containing arsenic, whether or not containing metals, of a kind used either for the extraction of arsenic or metals or for the manufacture of their chemical compounds."

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(63). The following subheading notes and title to chapter 26 are inserted before the additional U.S. notes:

"Subheading Notes

1. For the purposes of subheading 2620.21.00, "leaded gasoline sludges and leaded anti-knock compound sludges" means sludges obtained from storage tanks of leaded gasoline and leaded anti-knock compounds (for example, tetraethyl lead), and consisting essentially of lead, lead compounds and iron oxide.

2. Ash and residues containing arsenic, mercury, thallium or their mixtures, of a kind used for the extraction of arsenic or those metals or for the manufacture of their chemical compounds, are to be classified in subheading 2620.60."

(64)(a). The article description of heading 2620 is modified to read:

"Ash and residues (other than from the manufacture of iron or steel), containing arsenic, metals or their compounds:"

(b). Subheading 2620.50.00 is deleted.

(c). Subheadings 2620.20.00 and 2620.90 through 2620.90.85 and any intervening text to subheadings between 2620.90 and 2620.90.85 are superseded and the following provisions inserted in numerical sequence:

	:[Ash and residues (other than from the...]			
	: "Containing mainly lead:			
2620.21.00	: Leaded gasoline sludges and leaded anti-knock compound sludges	: Free		: 8.8¢/kg on copper content + 3.3¢/kg on lead content + 3.7¢/kg on zinc content
2620.29.00	: Other	: Free		: 8.8¢/kg on copper content + 3.3¢/kg on lead content + 3.7¢/kg on zinc content
2620.60	: Containing arsenic, mercury, thallium or their mixtures, of a kind used for the extraction of arsenic or those metals or for the manufacture of their chemical compounds:			
2620.60.10	: Of a kind used only for the extraction of arsenic or the manufacture of its chemical compounds	: 5%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 25%
2620.60.90	: Other	: Free		: 30%
	: Other:			
2620.91.00	: Containing antimony, beryllium, cadmium, chromium or their mixtures	: Free		: 30%

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	:[Ash and residues (other than from the...]			
	: [Other:]			
2620.99	: Other:			
2620.99.10	: Containing mainly vanadium.....	: Free		: Free
2620.99.20	: Containing mainly tungsten.....	: 17.6¢/kg on tungsten content + 3.8%	: Free (A,CA,E,IL,J, MX) [See Annex III(D)2 to this proclamation](JO)	: $1.32/kg on tungsten content + 40%
2620.99.30	: Materials not provided for elsewhere in this heading containing by weight over 10 percent nickel.....	: Free		: Free
2620.99.50	: Slag containing by weight over 40 percent titanium, and which if containing over 2 percent by weight of copper, lead, or zinc is not to be treated for the recovery thereof.....	: Free		: Free
2620.99.75	: Other materials which are residues not advanced in value or condition by any means, and which if containing over 2 percent by weight of copper, lead or zinc are not to be treated for the recovery thereof.....	: Free		: Free
2620.99.85	: Other.....	: Free		: 30%"

(65). Heading 2621.00.00 is superseded by:

"2621	: Other slag and ash, including seaweed ash (kelp); ash and residues from the incineration of municipal waste:			
2621.10.00	: Ash and residues from the incineration of municipal waste.....	: Free		: Free
2621.90.00	: Other.....	: Free		: Free"

(66). The following note to chapter 27 is inserted in numerical sequence:

"3. For the purposes of heading 2710, "waste oils" means waste containing mainly petroleum oils obtained from bituminous minerals (as described in note 2 to this chapter), whether or not mixed with water. These include:

(a) Such oils no longer fit for use as primary products (for example, used lubricating oils, used hydraulic oils and used transformer oils);

(b) Sludge oils from the storage tanks of petroleum oils, mainly containing such oils and a high concentration of additives (for example, chemicals) used in the manufacture of the primary products; and

(c) Such oils in the form of emulsions in water or mixtures with water, such as those resulting from oil spills, storage tank washings, or from the use of cutting oils for machining operations."

(67). Subheading note 3 to chapter 27 is superseded by:

"3. For the purposes of subheadings 2707.10, 2707.20, 2707.30, 2707.40 and 2707.60, the terms "benzene", "toluene", "xylenes", "naphthalene" and "phenols" apply to products which contain more than 50 percent by weight of benzene, toluene, xylenes, naphthalene or phenols, respectively."

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(68). The following subheading note to chapter 27 is inserted in numerical sequence:

"4. For the purposes of subheading 2710.11, "light oils and preparations" are those of which 90 percent or more by volume (including losses) distill at 210°C (ASTM D 86 method)."

(69)(a). Heading 2710.00 and all subordinate subheadings and text thereto are superseded by:

"2710	Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils:			
	Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than waste oils:			
2710.11	Light oils and preparations:			
2710.11.15	Motor fuel	52.5¢/bbl	Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	$1.05/bbl
2710.11.18	Motor fuel blending stock	52.5¢/bbl	Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	$1.05/bbl
2710.11.25	Naphthas (except motor fuel or motor fuel blending stock)	10.5¢/bbl	Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	21¢/bbl
	Other:			
2710.11.45	Mixtures of hydrocarbons not elsewhere specified or included, which contain by weight not over 50 percent of any single hydrocarbon compound	10.5¢/bbl	Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	21¢/bbl
2710.11.90	Other	7%	Free (A+,CA,E,D, IL,J) [See Annex III(B) to this proclamation](MX) [See Annex III(D)2 to this proclamation](JO)	25%

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	:[Petroleum oils and oils obtained...]			
	: [Petroleum oils and oils obtained...]			
2710.19	: Other:			
	: Distillate and residual fuel oils (including blended fuel oils):			
2710.19.05	: Testing under 25 degrees A.P.I.....	: 5.25¢/bbl	: Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	: 21¢/bbl
2710.19.10	: Testing 25 degrees A.P.I. or more.....	: 10.5¢/bbl	: Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	: 21¢/bbl
2710.19.15	: Kerosene-type jet fuel.....	: 52.5¢/bbl	: Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	: $1.05/bbl
	: Kerosene (except kerosene-type jet fuel):			
2710.19.21	: Motor fuel.....	: 52.5¢/bbl	: Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	: $1.05/bbl
2710.19.22	: Motor fuel blending stock.....	: 52.5¢/bbl	: Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	: $1.05/bbl
2710.19.23	: Kerosene (except motor fuel or motor fuel blending stock).....	: 10.5¢/bbl	: Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	: 21¢/bbl
	: Lubricating oils and greases, with or without additives:			
2710.19.30	: Oils.....	: 84¢/bbl	: Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	: $1.68/bbl

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	[Petroleum oils and oils obtained...]			
	[Petroleum oils and oils obtained from...]			
	[Other:]			
	[Lubricating oils and greases, with...]			
	Greases:			
2710.19.35	Containing not over 10 percent by weight of salts of fatty acids of animal (including marine animal) or vegetable origin	5.8%	Free (A,CA,IL,MX, R) [See Annex III(D)2 to this proclamation](JO)	20%
2710.19.40	Other	1.3¢/kg + 5.7%	Free (A,CA,IL,MX, R) [See Annex III(D)2 to this proclamation](JO)	4.4¢/kg + 20%
	Other:			
2710.19.45	Mixtures of hydrocarbons not elsewhere specified or included, which contain by weight not over 50 percent of any single hydrocarbon compound	10.5¢/bbl	Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	21¢/bbl
2710.19.90	Other	7%	Free (A+,CA,E,D, IL,J) [See Annex III(B) to this proclamation](MX) [See Annex III(D)2 to this proclamation](JO)	25%
	Waste oils:			
2710.91.00	Containing polychlorinated biphenyls (PCBs), polychorlinated terphenyls (PCTs) or polybrominated biphenyls (PBBs)	10.5¢/bbl	Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	21¢/bbl
2710.99	Other:			
	Wastes of distillate and residual fuel oils (whether or not blended):			
2710.99.05	Testing under 25 degrees A.P.I.	5.25¢/bbl	Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	21¢/bbl

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	:[Petroleum oils and oils obtained...]			
	: [Waste oils:]			
	: [Other:]			
	: [Wastes of distillate and residual...]			
2710.99.10	: Testing 25 degrees A.P.I. or more.....	: 10.5¢/bbl	: Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	: 21¢/bbl
2710.99.16	: Wastes of motor fuel or of motor fuel blending stock.....	: 52.5¢/bbl	: Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	: $1.05/bbl
2710.99.21	: Wastes of kerosene or naphthas.....	:10.5¢/bbl	: Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	: 21¢/bbl
	: Wastes of lubricating oils and greases (whether or not containing additives):			
2710.99.31	: Of oils.....	: 84¢/bbl	: Free (A+,CA,D,IL, JO) [See Annex III(C) to this proclamation] (MX,R)	: $1.68/bbl
	: Of greases:			
2710.99.32	: Containing not over 10 percent by weight of salts of fatty acids of animal (including marine animal) or vegetable origin.....	: 5.8%	: Free (A,CA,IL,MX, R) [See Annex III(D)2 to this proclamation](JO)	: 20%
2710.99.39	: Other.....	: 1.3¢/kg + 5.7%	: Free (A,CA,IL,MX, R) [See Annex III(D)2 to this proclamation](JO)	: 4.4¢/kg + 20%
	: Other:			
2710.99.45	: Mixtures of hydrocarbons not elsewhere specified or included, which contain by weight not over 50 percent of any single hydrocarbon compound.....	: 10.5¢/bbl	: Free (A+,CA,D,IL) JO) [See Annex III(C) to this proclamation] (MX,R)	: 21¢/bbl

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	:[Petroleum oils and oils obtained...]	:	: :
	: [Waste oils:]	:	: :
	: [Other:[	:	: :
	: [Other:]	:	: :
2710.99.90	: Other	: 7%	: Free (A+,CA,E,D, IL,J) : 25%"
	:	:	: [See Annex III(B) :
	:	:	: to this :
	:	:	: proclamation](MX) :
	:	:	: [See Annex III(D)2 :
	:	:	: to this :
	:	:	: proclamation](JO) :

(b). Conforming change: The article description of heading 9901.00.50 is modified by deleting "2710.00.15" and inserting "2710.11.15, 2710.19.15 or 2710.19.21" in lieu thereof.

(70). Note 3(d) to chapter 28 is superseded by:

"(d) Inorganic products of a kind used as luminophores, of heading 3206; glass frit and other glass in the form of powder, granules or flakes, of heading 3207;"

(71)(a). The superior text to subheading 2805.11.00 is modified to read:

"Alkali or alkaline-earth metals:"

(b). Subheadings 2805.19.00 through 2805.22.20 and any intervening text to such subheadings are superseded by:

	:[Alkali or alkaline-earth metals; rare-earth...]	:	: :
	: [Alkali or alkaline-earth metals:]	:	: :
2805.12.00	: Calcium	: 3%	: Free (A+,CA,D,E, IL,J,JO,MX) : 25%
2805.19	: Other:	:	: :
2805.19.10	: Strontium	: 3.7%	: Free (A*,CA,E,IL, J,JO,MX) : 25%
2805.19.20	: Barium	: Free	: : 25%
2805.19.90	: Other	: 5.5%	: Free (A+,CA,D,E, IL,J,MX) : 25%"
	:	:	: [See Annex III(D)2 :
	:	:	: to this :
	:	:	: proclamation](JO) :

(c). Conforming change: General note 4(d) is modified by deleting "2805.22.10 India" and inserting "2805.19.10 India" in lieu thereof.

(72). The article description of heading 2809 is modified to read:

"Diphosphorus pentaoxide; phosphoric acid; polyphosphoric acids, whether or not chemically defined:"

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(73)(a). Subheadings 2816.20.00 and 2816.30.00 are superseded by:

	:[Hydroxide and peroxide of magnesium; oxides,...]	:	:	:
"2816.40	: Oxides, hydroxides and peroxides, of strontium	:	:	:
	: or barium:	:	:	:
2816.40.10	: Of strontium.....	: 4.2%	: Free (A*,CA,E,IL,	: 25%
	:	:	: J,JO,MX)	:
2816.40.20	: Of barium.....	: 2%	: Free (A*,CA,E,IL,	: 10.5%"
	:	:	: J,JO,MX)	:

(b). Conforming change: General note 4(d) is modified by deleting "2816.20.00 India" and "2816.30.00 India" and inserting "2816.40.10 India" and "2816.40.20 India" in lieu thereof.

(74)(a). Subheading 2827.38.00 is deleted.

(b). The following subheading is inserted in numerical sequence:

	:[Chlorides, chloride oxides and chloride...]	:	:	:
	: [Other chlorides:]	:	:	:
	: [Other:]	:	:	:
"2827.39.45	: Of barium.....	: 4.2%	: Free (A*,CA,E,IL,	: 28.5%"
	:	:	: J,JO,MX)	:

(c). Conforming change: General note 4(d) is modified by deleting "2827.38.00 India" and inserting "2827.39.45 India" in numerical sequence in lieu thereof.

(75). The article description of heading 2830 is modified to read:

"Sulfides; polysulfides, whether or not chemically defined:"

(76)(a). Subheading 2834.22.00 is deleted.

(b). The following provision is inserted in numerical sequence:

	:[Nitrites; nitrates:]	:	:	:
	: [Nitrates:]	:	:	:
	: [Other:]	:	:	:
"2834.29.05	: Of bismuth.....	: 5.5%	: Free (A*,CA,E,IL,	: 35%"
	:	:	: J,MX)	:
	:	:	: [See Annex III(D)2	:
	:	:	: to this	:
	:	:	: proclamation](JO)	:

(c). Conforming change: General note 4(d) is modified by deleting "2834.22.00 India" and inserting "2834.29.05 India" in lieu thereof.

(77). The article description of heading 2835 is modified to read:

"Phosphinates (hypophosphites), phosphonates (phosphites) and phosphates; polyphosphates, whether or not chemically defined:"

(78). The article description of subheading 2836.70.00 is modified to read:

"Lead carbonates"

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(79)(a). Subheading 2841.40.00 is deleted.

(b). Subheading 2841.50.00 is superseded by:

	:[Salts of oxometallic or peroxometallic acids:]	:	:	:	
"2841.50	: Other chromates and dichromates; peroxochromates:	:	:	:	
2841.50.10	: Potassium dichromate	: 1.5%	: Free (A*,CA,E,IL, J,JO,MX)	: 3.5%	
2841.50.90	: Other	: 3.1%	: Free (A*,CA,E,IL, J,JO,MX)	: 25%"	

(c). Conforming changes: General note 4(d) is modified by:

(A). deleting the following subheadings and the countries set out opposite such subheadings:

2841.40.00 India
2841.50.00 Argentina
India

(B). adding, in numerical sequence, the following subheadings and countries set out opposite them:

2841.50.10 India
2841.50.90 Argentina;
India

(80)(a). The article description of heading 2842 is modified to read:

"Other salts of inorganic acids or peroxoacids (including aluminosilicates whether or not chemically defined), other than azides:"

(b). The article description of subheading 2842.10.00 is modified to read:

"Double or complex silicates, including aluminosilicates whether or not chemically defined"

(81). Note 1(c) to chapter 29 is superseded by:

"(c) The products of headings 2936 to 2939 or the sugar ethers, sugar acetals and sugar esters, and their salts, of heading 2940, or the products of heading 2941, whether or not chemically defined;"

(82). The following note to chapter 29 is inserted in numerical sequence:

"8. For the purposes of heading 2937:

(a) The term "hormones" includes hormone-releasing or hormone-stimulating factors, hormone inhibitors and hormone antagonists (antihormones);

(b) The expression "used primarily as hormones" applies not only to hormone derivatives and structural analogues used primarily for their hormonal effect, but also to those derivatives and structural analogues used primarily as intermediates in the synthesis of products of this heading."

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(83)(a). Subheading 2903.16.00 is deleted.

(b). The following subheading is inserted in numerical sequence:

	:[Halogenated derivatives of hydrocarbons:]	:	:	:	:
	: [Saturated chlorinated derivatives of...]	:	:	:	:
	: [Other:]	:	:	:	:
"2903.19.05	: 1,2-Dichloropropane (Propylene dichloride) and dichlorobutanes	: 5.1%	: Free (A*,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	:	33.3%"

(c). Conforming change: General note 4(d) is modified by deleting "2903.16.00 India" and inserting "2903.19.05 India" in lieu thereof.

(84)(a). Subheadings 2905.50 through 2905.50.60 and any intervening text to such subheadings are superseded by:

	:[Acyclic alcohols and their halogenated,...]	:	:	:	:
	: "Halogenated, sulfonated, nitrated or nitrosated derivatives of acyclic alcohols:	:	:	:	:
2905.51.00	: Ethchlorvynol (INN)	: Free	:	:	39%
2905.59	: Other:	:	:	:	:
2905.59.10	: Derivatives of monohydric alcohols	: 5.5%	: Free (A*,CA,E,IL, J,K,MX) [See Annex III(D)2 to this proclamation](JO)	:	39%
2905.59.30	: Dibromylpentylglycol	:[See Annex III(A) to this proclamation]	: Free (A*,CA,E,IL, J,MX)	:	54.5%
2905.59.90	: Other	:[See Annex III(A) to this proclamation]	: Free (A*,CA,E,IL, J,K,MX) [See Annex III(D)2 to this proclamation](JO)	:	54.5%"

(b). Conforming changes:

(A). General note 4(d) is modified by deleting "2905.50.10 India", "2905.50.30 India" and "2905.50.60 India" and inserting "2905.59.10 India", "2905.59.30 India" and "2905.59.90 India" in lieu thereof.

(B). The article description of heading 9902.33.08 is modified by deleting "2905.50.60" and inserting "2905.59.90" in lieu thereof.

(85)(a). The superior text immediately preceding subheading 2907.21.00 is modified to read:

"Polyphenols; phenol-alcohols:"

(b). Subheading 2907.30.00 is deleted.

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(c). The following subheading is inserted in numerical sequence:

	:[Phenols; phenol-alcohols:]	:	:	:
	: [Polyphenols; phenol-alcohols:]	:	:	:
	: [Other:]	:	:	:
"2907.29.05	: Phenol-alcohols.....	: 5.5%	: Free (A+,CA,D,E, IL,J,L) [See Annex III(B) to this proclamation](MX) [See Annex III(D)2 to this proclamation](JO)	: 15.4¢/kg + 44%"

(86). The article description of subheading 2915.60 is modified to read:

"Butanoic acids, pentanoic acids, their salts and esters:"

(87)(a). Subheadings 2918.17, 2918.17.10 and 2918.17.50 are deleted.

(b). The following provisions are inserted in numerical sequence:

	:[Carboxylic acids with additional oxygen function...]		:	::
	: [Carboxylic acids with alcohol function...]	:	:	:
	: [Other:]	:	:	:
	: [Aromatic:]	:	:	:
	: "Phenylglycolic acid (Mandelic acid), its salts and esters:	:	:	:
2918.19.12	: Mandelic acid.....	: Free	:	: 15.4¢/kg + 67.5%
2918.19.15	: Other.....	: 6.5%	: Free (A+,CA,D,E, IL,J,K,MX) [See Annex III(D)2 to this proclamation](JO)	: 15.4¢/kg + 67.5%"

(88). The title of subchapter VIII of chapter 29 is modified to read:

"VIII. ESTERS OF INORGANIC ACIDS OF NONMETALS AND THEIR SALTS, AND THEIR HALOGENATED, SULFONATED, NITRATED OR NITROSATED DERIVATIVES"

(89). The article description of heading 2920 is modified to read:

"Esters of other inorganic acids of nonmetals (excluding esters of hydrogen halides) and their salts; their halogenated, sulfonated, nitrated or nitrosated derivatives:"

(90)(a). The following subheading is inserted in numerical sequence:

	:[Amine-function compounds:]	:	:	:
	: [Aromatic monoamines and their...]	:	:	:
"2921.46.00	: Amfetamine (INN), benzfetamine (INN), dexamfetamine (INN), etilamfetamine (INN), fencamfamin (INN), lefetamine (INN), levamfetamine (INN), mefenorex (INN) and phentermine (INN); salts thereof.....	: Free	:	: 15.4¢/kg + 149.5%"

(b). Subheading 2921.49.37 is renumbered as 2921.49.38.

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(91). The superior text immediately preceding subheading 2922.11.00 is modified to read:

"Amino-alcohols, other than those containing more than one kind of oxygen function, their ethers and esters; salts thereof:"

(92). Subheadings 2922.19.12 and 2922.19.18 and the superior text immediately preceding 2922.19.12 are superseded and the following provisions are inserted in numerical sequence:

	:[Oxygen-function amino-compounds:]	:	:	:
	: [Amino-alcohols, other than...]	:	:	:
"2922.14.00	: Dextropropoxyphene (INN) and its salts.....	: Free	:	: 15.4¢/kg + 119.5%
	: [Other:]	:	:	:
	: [Aromatic:]	:	:	:
2922.19.09	: Drugs.....	: 6.5%	: Free (A+,CA,D,E, IL,J,K,MX) : [See Annex III(D)2 to this proclamation](JO)	: 15.4¢/kg + 45%"
	:[Oxygen-function amino-compounds:]	:	:	:
	: "Amino-aldehydes, amino-ketones and amino-quinones, other than those containing more than one kind of oxygen function; salts thereof:	:	:	:
2922.31.00	: Amfepramone (INN), methadone (INN) and normethadone (INN); salts thereof.....	: Free	:	: 15.4¢/kg + 50%
2922.39	: Other:	:	:	:
	: Aromatic:	:	:	:
2922.39.05	: 1-Amino-2,4-dibromo-anthraquinone; and 2-Amino-5-chlorobenzophenone.....	: Free	:	: 15.4¢/kg + 50%
2922.39.10	: 2'-Aminoacetophenone; 3'-Aminoacetophenone; 1-Amino-4-bromo-2-methyl-anthraquinone; 1,4-Bis[1-anthraquinonyl-amino]anthraquinone; 1,4-Dimesidinoanthraquinone; 4-Dimethylaminobenzaldehyde; and Iminodianthraquinone.....	: 5.8%	: Free (A+,CA,D,E, IL,J,MX) : [See Annex III(D)2 to this proclamation](JO)	: 15.4¢/kg + 39%

(93). The superior text immediately preceding subheading 2922.21 is modified to read:

"Amino-naphthols and other amino-phenols, other than those containing more than one kind of oxygen function, their ethers and esters; salts thereof:"

(94)(a). Subheadings 2922.30 through 22922.30.50 and any intervening text to such subheadings are superseded by:

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	:[Oxygen-function amino-compounds:]	:	:	:
	: [Amino-aldehydes, amino-ketones and...]	:	:	:
	: [Other:]	:	:	:
	: [Aromatic:]	:	:	:
2922.39.14	: 2-Aminoanthraquinone	:[See Annex III(A) : to this : proclamation]	: Free (A*,CA,E,IL, : J,MX) : [See Annex III(D)2 : to this : proclamation](JO)	: 15.4¢/kg + : 50%
2922.39.17	: 1-Aminoanthraquinone	: Free	:	: 15.4¢/kg + : 50%
	: Other:	:	:	:
2922.39.25	: Products described in additional U.S. note 3 to section VI	:	:	:
	:	:[See Annex III(A) : to this : proclamation]	: Free (A+,CA,D,E, : IL,J,K,MX) : [See Annex III(D)2 : to this : proclamation](JO)	: 15.4¢/kg + : 50%
2922.39.45	: Other	:[See Annex III(A) : to this : proclamation]	: Free (A+,CA,D,E, : IL,J,K,L) : [See Annex III(B) : to this : proclamation](MX) : [See Annex III(D)2 : to this : proclamation](JO)	: 15.4¢/kg + : 50%
2922.39.50	: Other	: 6.5%	: Free (A*,CA,E,IL, : J,K,MX) : [See Annex III(D)2 : to this : proclamation](JO)	: 30.5%"

(b). Conforming changes:

(i). General note 4(d) is modified by deleting "2922.30.14 India", "2922.30.17 India" and "2922.30.50 India" and inserting "2922.39.14 India" and "2922.39.50 India" in lieu thereof.

(ii). The article description of subheading 9906.29.12 is modified by deleting "2922.30.45" and inserting "2922.39.45" in lieu thereof.

(95). The superior text immediately preceding subheading 2922.41.00 is modified to read:

"Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof:"

(96)(a). The following subheading is inserted in numerical sequence:

	:[Oxygen-function amino-compounds (con.):]	:	:	:
	: [Amino-acids, other than those...]	:	:	:
"2922.44.00	: Tilidine (INN) and its salts	: Free	:	: 15.4¢/kg + : 45%"

(b). Subheading 2922.49.27 is renumbered as 2922.49.26.

(c). Conforming change: The article description of heading 9902.08.10 is modified by deleting '2922.49.27" and inserting '2922.49.26" in lieu thereof.

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(97). The article description of heading 2923 is modified to read:

"Quaternary ammonium salts and hydroxides; lecithins and other phosphoaminolipids, whether or not chemically defined:"

(98)(a). Subheadings 2924.10 through 2924.10.80 and any intervening text to such subheadings are superseded by:

	:[Carboxyamide-function compounds;...]	:	:	:
	: "Acyclic amides (including acyclic carbamates) and	:	:	:
	: their derivatives; salts thereof:	:	:	:
2924.11.00	: Meprobamate (INN).....	: Free	:	: 25%
2924.19	: Other:	:	:	:
2924.19.10.	: Amides.....	: 3.7%	: Free (A*,CA,E,IL,	: 25%
	:	:	: J,JO,K,MX)	:
2924.19.80	: Other.....	: 6.5%	: Free (A+,CA,D,E,	: 30.5%"
	:	:	: IL,J,K,MX)	:
	:	:	: [See Annex III(D)2	:
	:	:	: to this	:
	:	:	: proclamation](JO)	:

(b). Conforming changes:

(A). General note 4(d) is modified by deleting "2924.10.10 India" and inserting "2924.19.10 India" in lieu thereof.

(B). The article description of heading 9902.29.70 is modified by deleting "2924.10.10" and inserting "2924.19.10" in lieu thereof.

(C). The article description of heading 9902.29.52 is modified by deleting "2924.10.80" and inserting "2924.19.80" in lieu thereof.

(99)(a). Subheading 2924.22.00 is deleted.

(b). The following provisions are inserted in numerical sequence:

	:[Carboxyamide-function compounds;...]	:	:	:
	: [Cyclic amides (including cyclic...]	:	:	:
"2924.23	: 2-Acetamidobenzoic acid (N-acetylanthranilic	:	:	:
	: acid) and its salts:	:	:	:
2924.23.10	: 2-Acetamidobenzoic acid.....	:[See Annex III(A)	: Free (A+,CA,D,E,	: 15.4¢/kg +
	:	: to this	: IL,J)	: 58%
	:	: proclamation	: [See Annex III(B)	:
	:	:	: to this	:
	:	:	: proclamation](MX)	:
	:	:	: [See Annex III(D)2	:
	:	:	: to this	:
	:	:	: proclamation](JO)	:
	: Other:	:	:	:
2924.23.70	: Products described in additional	:	:	:
	: U.S. note 3 to section VI.....	:[See Annex III(A)	: Free (A+,CA,D,E,	: 15.4¢/kg +
	:	: to this	: IL,J,K,L,MX)	: 58%
	:	: proclamation	: [See Annex III(D)2	:
	:	:	: to this	:
	:	:	: proclamation](JO)	:

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	:[Carboxyamide-function compounds;...]	:	:	:
	: [Cyclic amides (including cyclic...]	:	:	:
	: [2-Acetamidobenzoic acid...]	:	:	:
	: [Other:]	:	:	:
2924.23.75	: Other.....	:[See Annex III(A) to this proclamation	: Free (A+,CA,D,E, IL,J,K,L,MX) [See Annex III(D)2 to this proclamation](JO)	: 15.4¢/kg + 58%
2924.24.00	: Ethinamate (INN).....	: Free	:	: 30.5%"

(b). Subheadings 2924.29.70, 2924.29.75 and 2924.29.90 are renumbered as 2924.29.71, 2924.29.76 and 2924.29.95, respectively.

(c). Conforming changes:

(A). General note 4(d) is modified by deleting "2924.29.90 India" and inserting "2924.29.95 India" in lieu thereof.

(B). The article description of headings 9902.29.29, 9902.29.72, 9902.29.91, 9902.32.54 and 9902.32.91 is modified by deleting "2924.29.70" and inserting "2924.29.71" in lieu thereof.

(C). The article description of heading 9902.29.65 is modified by deleting "2924.29.75" and inserting "2924.29.76" in lieu thereof.

(100)(a). Subheadings 2924.29.41 and 2935.00.05 are renumbered as 2924.29.43 and 2935.00.06, respectively, and the article description of such subheadings are modified to read as follows:

[2924.29.43]	"3-Ethoxycarbonylaminophenyl-*N*-phenylcarbamate (Desmedipham); and Isopropyl-*N*-(3-chlorophenyl)carbamate (CIPC)"
[2935.00.06]	"4-Amino-6-chloro-*m*-benzenedisulfonamide; and Methyl-4-aminobenzenesulfonylcarbamate (Asulam)"

(b). Conforming changes:

(A). General note 4(d) is modified by deleting "2924.29.41 India" and "2935.00.05 India" and inserting "2924.29.43 India" and "2935.00.06 India" in numerical sequence in lieu thereof.

(B). The article description of heading 9902.31.14 is modified by deleting "2924.29.41" and inserting "2924.29.43" in lieu thereof.

(101)(a). The following subheading is inserted in numerical sequence:

	:[Carboxyimide-function compounds (including saccharin...]	:	:	:
	: [Imides and their derivatives; salts thereof:]	:	:	:
"2925.12.00	: Glutethimide (INN).....	: Free	:	: 15.4¢/kg + 61%"

(b). Subheading 2925.19.40 is renumbered as 2925.19.42.

(c). Conforming change: The article description of heading 9902.33.66 is modified by deleting "2925.19.40" and inserting "2925.19.42" in lieu thereof

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(102)(a). The following subheadings are inserted in numerical sequence:

	:[Nitrile-function compounds:]	:	:	:	
"2926.30	: Fenproporex (INN) and its salts;	:	:	:	
	: Methadone (INN) intermediate (4-cyano-2-	:	:	:	
	: dimethylamino-4,4-diphenylbutane):	:	:	:	
2926.30.10	: Fenproporex (INN) and its salts.....	: Free	:	:	15.4¢/kg + 65.5%
2926.30.20	: 4-Cyano-2-dimethylamino-4,4-diphenylbutane.....	:[See Annex III(A) to this proclamation]	: Free (A+,CA,D,E, IL,J,MX) :[See Annex III(D)2 to this proclamation](JO)	:	15.4¢/kg + 65.5%"

(b). Subheadings 2926.90.44 and 2926.90.47 are renumbered as 2926.90.43 and 2926.90.48, respectively.

(103)(a). The following subheading is inserted in numerical sequence:

	:[Heterocyclic compounds with oxygen hetero-atom(s)...]	:	:	:	
	: [Other:]	:	:	:	
"2932.95.00	: Tetrahydrocannabinols (all isomers).....	: Free	:	:	15.4¢/kg + 52%"

(b). Subheading 2932.99.60 is renumbered as 2932.99.61.

(104)(a). The following subheading is inserted in numerical sequence:

	:[Heterocyclic compounds with nitrogen hetero-...]	:	:	:	
	: [Compounds containing an unfused pyridine ring...]	:	:	:	
"2933.33.00	: Alfentanil (INN), anileridine (INN),	:	:	:	
	: bezitramide (INN), bromazepam (INN),	:	:	:	
	: difenoxin (INN), diphenoxylate (INN),	:	:	:	
	: dipipanone (INN), fentanyl (INN),	:	:	:	
	: ketobemidone (INN), methylphenidate (INN),	:	:	:	
	: pentazocine (INN), pethidine (INN),	:	:	:	
	: pethidine (INN) intermediate A, phencyclidine	:	:	:	
	: (INN) (PCP), phenoperidine (INN),	:	:		
	: pipradol (INN), piritramide (INN),	:	:	:	
	: propiram (INN) and trimeperidine (INN);	:	:	:	
	: salts thereof.....	: Free	:	:	15.4¢/kg + 149.5%"

(b). Subheading 2933.39.30 is renumbered as 2933.39.31.

(105)(a). Subheading 2933.40 and all subordinate subheadings and text to such subheading and subheading 2933.51 and all subordinate subheadings and text to such subheading are superseded and the following provisions are inserted in numerical sequence:

	:[Heterocyclic compounds with nitrogen hetero-...]	:	:	:	
	: "Compounds containing in the structure a quinoline	:	:	:	
	: or isoquinoline ring-system (whether or not	:	:	:	
	: hydrogenated), not further fused:	:	:	:	
2933.41.00	: Levorphanol (INN) and its salts.....	: Free	:	:	15.4¢/kg + 67.5%

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	[Heterocyclic compounds with nitrogen hetero-...]			
	[Compounds containing in the structure...]			
2933.49	Other:			
2933.49.08	4,7-Dichloroquinoline	[See Annex III(A) to this proclamation	Free (A*,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 52%
2933.49.10	Ethoxyquin (1,2-Dihydro-6-ethoxy-2,2,4-trimethylquinoline)	6.5%	Free (A*,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 55%
2933.49.15	8-Methylquinoline and Isoquinoline	5.8%	Free (A+,CA,D,E, IL,J,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 39.5%
2933.49.17	Ethyl ethyl-6,7,8-trifluoro-1,4-dihydro-4-oxo-3-quinolinecarboxylate	Free		15.4¢/kg + 52%
	Other:			
	Drugs:			
2933.49.20	5-Chloro-7-iodo-8-quinolinol (Iodochlorhydroxyquin); Decoquinate; Diiodohydroxyquin; and Oxyquinoline sulfate	6.5%	Free (A+,CA,D,E, IL,J,K,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 46%
2933.49.26	Other	6.5%	Free (A+,CA,D,E, IL,J,K,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 67.5%
2933.49.30	Pesticides	[See Annex III(A) to this proclamation]	Free (A*,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 40%
	Other:			
2933.49.60	Products described in additional U.S. note 3 to section VI	[See Annex III(A) to this proclamation	Free (A+,CA,D,E, IL,J,K,L,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 52%
2933.49.70	Other	[See Annex III(A) to this proclamation]	Free (A+,CA,D,E, IL,J,K,L,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 52%
	[Compounds containing a pyrimidine ring...]			
2933.52	Malonylurea (barbituric acid) and its salts:			
2933.52.10	Malonylurea (barbituric acid)	Free		25%
2933.52.90	Other	Free		50%

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	:[Heterocyclic compounds with nitrogen hetero-...]	:	:	:
	: [Compounds containing a pyrimidine ring...]	:	:	:
2933.53.00	: Allobarbital (INN), amobarbital (INN),	:	:	:
	: barbital (INN), butalbital (INN), butobarbital,	:	:	:
	: cyclobarbital (INN), methylphenobarbital (INN),	:	:	:
	: pentobarbital (INN), phenobarbital (INN),	:	:	:
	: secbutabarbital (INN), secobarbital (INN) and	:	:	:
	: vinylbital (INN); salts thereof.....	: Free	:	: 50%
	:	:	:	:
2933.54.00	: Other derivatives of malonylurea (barbituric	:	:	:
	: acid); salts thereof.....	: 3.7%	: Free (A+,CA,D,E,	: 50%
	:	:	: IL,J,JO,K,L,	:
	:	:	: MX)	:
2933.55.00	: Loprazolam (INN), mecloqualone (INN),	:	:	:
	: methaqualone (INN) and zipeprol (INN);	:	:	:
	: salts thereof.....	: Free	:	: 15.4¢/kg +
	:	:	:	: 149.5%"

(b). Subheading 2933.59.45 is renumbered as 2933.59.46.

(c). Conforming changes:

(A). General note 4(d) is modified by:

(i). deleting the following subheadings and the countries set out opposite such subheadings:

2933.40.08 India
2933.40.10 India
2933.40.30 Argentina;
India

(ii). adding, in numerical sequence, the following subheadings and countries set out opposite them:

2933.49.08 India
2933.49.10 India
2933.49.30 Argentina;
India

(B). The article description of heading 9902.33.40 is modified by deleting "2933.40.26" and inserting "2933.49.26" in lieu thereof.

(C). The article description of headings 9902.29.47 and 9902.29.60 is modified by deleting "2933.40.30" and inserting "2933.49.30" in lieu thereof.

(D). The article description of headings 9902.30.65, 9902.32.43. 9902.32.44 and 9902.32.45 is modified by deleting "2933.40.60" and inserting "2933.49.60" in lieu thereof.

(E). The article description of heading 9902.29.61 is modified by deleting "2933.40.70" and inserting "2933.49.70" in lieu thereof.

(106)(a). The following subheading is inserted in numerical sequence:

	:[Heterocyclic compounds with nitrogen hetero-...]	:	:	:
	: [Lactams:]	:	:	:
"2933.72.00	: Clobazam (INN) and methyprylon (INN).....	: Free	:	: 15.4¢/kg +
	:	:	:	: 52%"

(b). Subheadings 2933.79.09 and 2933.79.80 are renumbered as 2933.79.08 and 2933.79.85, respectively.

(c). Conforming change: General note 4(d) is modified by deleting "2933.79.80 India" and inserting "2933.79.85 India" in lieu thereof.

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(107)(a). Subheadings 2933.90 through 2933.90.97 and any intervening text to such subheadings are superseded by:

	:[Heterocyclic compounds with nitrogen hetero-...]			
	: "Other:			
2933.91.00	: Alprazolam (INN), camazepam (INN), chlordiazepoxide (INN), clonazepam (INN), clorazepate, delorazepam (INN), diazepam (INN), estazolam (INN), ethyl loflazepate (INN), fludiazepam (INN), flunitrazepam (INN), flurazepam (INN), halazepam (INN), lorazepam (INN), lormetazepam (INN), mazindol (INN), medazepam (INN), midazolam (INN), nimetazepam (INN), nitrazepam (INN), nordazepam (INN), oxazepam (INN), pinazepam (INN), prazepam (INN), pryovalerone (INN), temazepam (INN), tetrazepam (INN) and triazolam (INN); salts thereof	Free		15.4¢/kg + 149.5%
2933.99	: Other:			
	: Aromatic or modified aromatic:			
2933.99.01	: Butyl (*R*)-2-[4-(5-trifluoromethyl-2-pyridinyloxy)phenoxy]propanoate	Free		15.4¢/kg + 50%
2933.99.02	: 2-[4-[(6-Chloro-2-quinoxalinyl)oxy]-phenoxy]propionic acid, ethyl ester; and O,O-Dimethyl-*S*-[(4-oxo-1,2,3-benzotriazin-3-(4*H*)-yl)methyl]-phosphorodithioate	Free		15.4¢/kg + 64.5%
2933.99.05	: Acridine and indole	Free		Free
2933.99.06	: α-Butyl-α-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (Myclobutanil); and α-[2-(4-Chlorophenyl)ethyl]-α-phenyl-1*H*-1,2,4-triazole-1-propanenitrile (Fenbuconazole)	[See Annex III(A) to this proclamation]	Free (A*,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 64.5%
2933.99.08	: Acetoacetyl-5-aminobenz-imidazolone; 3-(2*H*-Benzotriazol-2-yl)-5-(*tert*-butyl)-4-hydroxybenzene propanoic acid, C_7-C_9 branched or linear alkyl esters; 2-(2*H*-Benzotriazol-2-yl)-6-dodecyl-4-methylphenol, in liquid form, branched and linear; and 1,3,3-Trimethyl-2-methylene-indoline	Free		15.4¢/kg + 52%
2933.99.11	: Carbazole	Free		15.4¢/kg + 39.5%

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	:[Heterocyclic compounds with nitrogen hetero-...]	:	:	:
	: [Other:]	:	:	:
	: [Other:]	:	:	:
	: [Aromatic or modified aromatic:]	:	:	:
2933.99.13	: 6-Bromo-5-methyl-1*H*-imidazo-	:	:	:
	: [4,5-*b*]pyridine;	:	:	:
	: 2-*sec*-Butyl-4-*tert*-butyl-6-	:	:	:
	: (benzotriazol-2-yl)phenol;	:	:	:
	: 2-*tert*-Butyl-4-methyl-6-	:	:	:
	: (5-chlorobenzotriazol-2-yl)phenol;	:	:	:
	: 2,4-Di-*tert*-butyl-6-(benzotriazol-	:	:	:
	: 2-yl)phenol;	:	:	:
	: 2,4-Di-*tert*-butyl-6-(5-chloro-	:	:	:
	: benzotriazol-2-yl)phenol;	:	:	:
	: 2,3-Dichloro-6-quinoxaline-	:	:	:
	: carbonyl chloride;	:	:	:
	: 1-Hydroxy-2-carbazolecarboxylic	:	:	:
	: acid;	:	:	:
	: 2-Hydroxy-3-carbazolecarboxylic	:	:	:
	: acid;	:	:	:
	: 2-Hydroxy-3-carbazolecarboxylic	:	:	:
	: acid, sodium salt;	:	:	:
	: Iminodibenzyl(10,11-dihydro-	:	:	:
	: 5*H*-dibenz[*b*,*f*]azepine);	:	:	:
	: Indoline;	:	:	:
	: 3-Methylbenzo[*f*]quinoline;	:	:	:
	: 2-Methylindoline;	:	:	:
	: 2-Methylmercaptobenzimidazole;	:	:	:
	: 1-Methyl-2-phenylindole;	:	:	:
	: 1-Methylpyrazine;	:	:	:
	: 2,4-Methylpyrazolic acid;	:	:	:
	: 2-Phenylbenzimidazole;	:	:	:
	: 2-Phenylindole;	:	:	:
	: 3-Quinuclidinol;	:	:	:
	: Tetramethylpyrazine;	:	:	:
	: 2,3,5-Triphenyltetrazolium chloride;	:	:	:
	: *dl*-Tryptophan; and	:	:	:
	: Vinylcarbazole, monomer.....	: 5.8%	: Free (A+,CA,D,E,	: 15.4¢/kg +
	:	:	: IL,J,K,MX)	: 39.5%
	:	:	: [See Annex III(D)2	:
	:	:	: to this	:
	:	:	: proclamation](JO)	:
	: Other:	:	:	:
	: Pesticides:	:	:	:
2933.99.14	: 5-Amino-4-chloro-2-	:	:	:
	: phenyl-3-pyridazinone.....	: 6.5%	: Free (A*,CA,E,IL,	: 15.4¢/kg +
	:	:	: J,MX)	: 40.5%
	:	:	: [See Annex III(D)2	:
	:	:	: to this	:
	:	:	: proclamation](JO)	:
2933.99.16	: *o*-Diquat dibromide	:	:	:
	: (1,1'-Ethylene-2,2'-	:	:	:
	: dipyridylium dibromide).....	: Free	:	: 15.4¢/kg +
	:	:	:	: 40.5%

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	[Heterocyclic compounds with nitrogen hetero-...]			
	[Other:]			
	[Other:]			
	[Aromatic or modified aromatic:]			
	[Other:]			
	[Pesticides:]			
	Other:			
2933.99.17	Insecticides	[See Annex III(A) to this proclamation]	Free (A*,CA,E,IL,J,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 64.5%
2933.99.22	Other	[See Annex III(A) to this proclamation]	Free (A*,CA,E,IL,J,L,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 64.5%
2933.99.24	Photographic chemicals	6.5%	Free (A*,CA,E,IL,J,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 50%
	Drugs:			
2933.99.26	Antihistamines	6.5%	Free (A+,CA,D,E,IL,J,K,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 45%
	Anti-infective agents:			
2933.99.42	Acriflavine; Acriflavine hydrochloride; Carbadox; and Pyrazinamide	Free		15.4¢/kg + 45%
2933.99.46	Other	6.5%	Free (A+,CA,D,E,IL,J,K,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 67.5%
	Cardiovascular drugs:			
2933.99.51	Hydralazine hydrochloride	Free		15.4¢/kg + 47.5%
2933.99.53	Other	6.5%	Free (A+,CA,D,E,IL,J,K,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 65%
	Drugs primarily affecting the central nervous system:			
2933.99.55	Analgesics, antipyretics and nonhormonal anti-inflammatory agents	6.5%	Free (A*,CA,E,IL,J,K,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 47.5%

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	:[Heterocyclic compounds with nitrogen hetero-...]	:	:	:
	: [Other:]	:	:	:
	: [Other:]	:	:	:
	: [Aromatic or modified aromatic:]	:	:	:
	: [Other:]	:	:	:
	: [Drugs:]	:	:	:
	: [Drugs primarily...]	:	:	:
	: Antidepressants, tranquilizers and other psycho-therapeutic agents:	:	:	:
2933.99.58	: Droperidol; and Imipramine hydro-chloride	: Free	:	: 15.4¢/kg + 45.5%
2933.99.61	: Other	: [See Annex III(A) to this proclamation]	: Free (A+,CA,D,E, IL,J,K,MX) [See Annex III(D)2 to this proclamation](JO)	: 15.4¢/kg + 149.5%
2933.99.65	: Anticonvulsants, hypnotics and sedatives	: 6.5%	: Free (A+,CA,D,E, IL,J,K,MX) [See Annex III(D)2 to this proclamation](JO)	: 15.4¢/kg + 48.5%
2933.99.70	: Other	: 6.5%	: Free (A+,CA,D,E, IL,J,K,MX) [See Annex III(D)2 to this proclamation](JO)	: 15.4¢/kg + 58.5%
2933.99.75	: Other	: 6.5%	: Free (A+,CA,D,E, IL,J,K,MX) [See Annex III(D)2 to this proclamation](JO)	: 15.4¢/kg + 45%
	: Other:	:	:	:
2933.99.79	: Products described in additional U.S. note 3 to section VI	: [See Annex III(A) to this proclamation]	: Free (A+,CA,D,E, IL,J,K,L,MX) [See Annex III(D)2 to this proclamation](JO)	: 15.4¢/kg + 52%
2933.99.82	: Other	: [See Annex III(A) to this proclamation]	: Free (A+,CA,D,E, IL,J,K,L,MX) [See Annex III(D)2 to this proclamation](JO)	: 15.4¢/kg + 52%
	: Other:	:	:	:
2933.99.85	: 3-Amino-1,2,4-triazole	: 3.7%	: Free (A*,CA,E,IL, J,JO,MX)	: 25%
2933.99.87	: Hexamethylenetetramine	: 6.3%	: Free (A*,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	: 58%

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	:[Heterocyclic compounds with nitrogen hetero-...]	:	:	:
	: [Other:]	:	:	:
	: [Other:]	:	:	:
	: [Other:]	:	:	:
2933.99.89	: Hexamethyleneimine.....	: Free	:	: 30.5%
	: Other:	:	:	:
2933.99.90	: Drugs.....	: 3.7%	: Free (A*,CA,E,IL, J,JO,K,MX)	: 25%
2933.99.97	: Other.....	: 6.5%	: Free (A*,CA,E,IL, J,K,L,MX)	: 30.5%*
	:	:	: [See Annex III(D)2 to this proclamation](JO)	:

(b). Conforming changes:

(A). General note 4(d) is modified by:

(i). deleting the following subheadings and the countries set out opposite such subheadings:

2933.90.06 India	2933.90.24 India	2933.90.87 India
2933.90.14 India	2933.90.55 Argentina; India	2933.90.90 India
2933.90.17 India		2933.90.97 India
2933.90.22 India	2933.90.85 India	

(ii). adding, in numerical sequence, the following subheadings and countries set out opposite them:

2933.99.06 India	2933.99.24 India	2933.99.87 India
2933.99.14 India	2933.99.55 Argentina; India	2933.99.90 India
2933.99.17 India		2933.99.97 India
2933.99.22 India	2933.99.85 India	

(B). The article description of heading 9902.32.87 is modified by deleting "2933.90.06" and inserting "2933.99.06" in lieu thereof.

(C). The article description of heading 9902.32.89 is modified by deleting "2933.90.17" and inserting "2933.99.17" in lieu thereof.

(D). The article description of heading 9902.38.30 is modified by deleting "2933.90.22" and inserting "2933.99.22" in lieu thereof.

(E). The article description of headings 9902.29.37 and 9902.29.39 is modified by deleting "2933.90.24" and inserting "2933.99.24" in lieu thereof.

(F). The article description of headings 9902.20.05 and 9902.29.92 is modified by deleting "2933.90.46" and inserting "2933.99.46" in lieu thereof.

(G). The article description of headings 9902.29.22, 9902.29.38 and 9902.33.16 is modified by deleting "2933.90.79" and inserting "2933.99.79" in lieu thereof.

(H). The article description of heading 9902.33.90 is modified by deleting "2933.90.82" and inserting "2933.99.82" in lieu thereof.

(IJ). The article description of heading 9902.29.08 is modified by deleting "2933.90.97" and inserting "2933.99.97" in lieu thereof.

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(108). The article description of heading 2934 is modified to read:

"Nucleic acids and their salts, whether or not chemically defined; other heterocyclic compounds:"

(109). The article description of subheading 2934.20 is modified to read:

"Compounds containing in the structure a benzothiazole ring-system (whether or not hydrogenated), not further fused:"

(110). The article description of subheading 2934.30 is modified to read:

"Compounds containing in the structure a phenothiazine ring-system (whether or not hydrogenated), not further fused:".

(111)(a). Subheadings 2934.90 through 2934.90.90 and any intervening text to such subheadings are superseded by:

	[Nucleic acids and their salts, whether...]			
	"Other:			
2934.91.00	Aminorex (INN), brotizolam (INN), clotiazepam (INN), cloxazolam (INN), dextromoramide (INN), haloxazolam (INN), ketazolam (INN), mesocarb (INN), oxazolam (INN), pemoline (INN), phendimetrazine (INN), phenmetrazine (INN) and sufentanil (INN); salts thereof.....	Free		15.4¢/kg + 45%
2934.99	Other:			
	Aromatic or modified aromatic:			
2934.99.01	Mycophenolate mofetil.....	Free		15.4¢/kg + 45%
2934.99.03	2-Acetylbenzo(*b*)thiophene; 3-Methylene-7-(2-phenoxy-acetamido)cephan-4-carboxylic acid, *p*-nitrobenzyl ester, 1-oxide; and Naphth[1,2-*d*]-[1,2,3]-oxadiazole-5-sulfonic acid and its sodium salt.....	Free		15.4¢/kg + 52%
2934.99.05	5-Amino-3-phenyl-1,2,4-thiadiazole (3-Phenyl-5-amino-1,2,4-thiadiazole); 2-Hydroxybenzoxazole (Benzoxazolone); 4-Phenylmorpholine; 1,9-Thianthrenedicarboxylic acid; and Thioxanthene-9-one (Thioxanthone).....	5.8%	Free (A+,CA,D,E, IL,J,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 39.5%
2934.99.06	7-Nitronaphth[1,2]oxadiazole-5-sulfonic acid and its salts.....	6.5%	Free (A+,CA,D,E, IL,J,L,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 66.5%

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	[Nucleic acids and their salts, whether...]			
	[Other:]			
	[Other:]			
	[Aromatic or modified aromatic:]			
2934.99.07	Ethyl 2-[4-[(6-chloro-2-benz-oxazolyl)oxy]phenoxy]propanoate (Fenoxaprop-ethyl)	Free		15.4¢/kg + 48.5%
2934.99.08	2,5-Diphenyloxazole	[See Annex III(A) to this proclamation]	Free (A*,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 52%
2934.99.09	1,2-Benzisothiazolin-3-one	Free		15.4¢/kg + 40.5%
	Other:			
	Pesticides:			
2934.99.11	2-*tert*-Butyl-4-(2,4-dichloro-5-isoprop-oxyphenyl)-Δ^2-1,3,4-oxadiazolin-5-one; 3-Isopropyl-1*H*-2,1,3-benzothiadiazin-4-(3*H*)-one-2,2-dioxide (Bentazon); and *O,O*-Diethyl-*S*-[(6-chloro-2-oxobenzox-azolin-3-yl)methyl]-phosphorodithioate (Phosalone)	6.5%	Free (A*,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 40.5%
	Other:			
2934.99.12	Fungicides	[See Annex III(A) to this proclamation]	Free (A*,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 40%
2934.99.15	Herbicides	[See Annex III(A) to this proclamation]	Free (A*,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 48.5%
2934.99.16	Insecticides	[See Annex III(A) to this proclamation]	Free (A*,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 64.5%
2934.99.18	Other	[See Annex III(A) to this proclamation]	Free (A*,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 40%
2934.99.20	Photographic chemicals	6.5%	Free (A*,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 50%

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	[Nucleic acids and their salts, whether...]			
	[Other:]			
	[Other:]			
	[Aromatic or modified aromatic:]			
	[Other:]			
2934.99.30	Drugs	6.5%	Free (A*,CA,E,IL, J,K,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 45%
	Other:			
2934.99.39	Products described in additional U.S. note 3 to section VI	[See Annex III(A) to this proclamation]	Free (A+,CA,D,E, IL,J,K,L,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 52%
2934.99.44	Other	[See Annex III(A) to this proclamation]	Free (A+,CA,D,E, IL,J,K,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 52%
	Other:			
2934.99.47	Drugs	3.7%	Free (A*,CA,E,IL, J,JO,K,MX)	25%
	Other:			
2934.99.70	Morpholinoethyl chloride hydrochloride; 2-Methyl-2,5-dioxo-1-oxa-2-phospholan; and (6*R-trans*)-7-Amino-3-methyl-8-oxo-5-thia-1-azabicyclo[4.2.0]-oct-2-ene-2-carboxylic acid	Free		30.5%
2934.99.90	Other	6.5%	Free (A*,CA,E,IL, J,K,MX) [See Annex III(D)2 to this proclamation)(JO)	30.5%*

(b). Conforming changes:

(A). General note 4(d) is modified by:

(i). deleting the following subheadings and the countries set out opposite such subheadings:

2934.90.08 India	2934.90.16 India	2934.90.90 India
2934.90.11 India	2934.90.18 India	
2934.90.12 India	2934.90.20 India	
2934.90.15 Brazil; India	2934.90.30 India	
	2934.90.47 India	

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(ii). adding, in numerical sequence, the following subheadings and countries set out opposite them:

2934.99.08 India	2934.99.16 India	2934.99.90 India
2934.99.11 India	2934.99.18 India	
2934.99.12 India	2934.99.20 India	
2934.99.15 Brazil;	2934.99.30 India	
India	2934.99.47 India	

(B). The article description of heading 9902.29.67 is modified by deleting "2934.90.11" and inserting "2934.99.11" in lieu thereof.

(C). The article description of headings 9902.29.42, 9902.29.74, 9902.29.80, 9902.29.97 and 9902.38.20 is modified by deleting "2934.90.12" and inserting "2934.99.12" in lieu thereof.

(D). The article description of headings 9902.29.66, 9902.29.79 and 9902.30.17 is modified by deleting "2934.90.15" and inserting "2934.99.15" in lieu thereof.

(E). The article description of heading 9902.29.37 is modified by deleting "2934.90.20, and 2934.90.90" and inserting "2934.99.20, and 2934.99.90" in lieu thereof.

(F). The article description of heading 9902.32.56 is modified by deleting "2934.90.30" and inserting "2934.99.30" in lieu thereof.

(G). The article description of heading 9902.32.97 is modified by deleting "2934.90.39" and inserting "2934.99.39" in lieu thereof.

(H). The article description of headings 9902.29.51, 9902.29.55, 9902.29.87, 9902.32.33, 9902.32.36 and 9902.32.39 is modified by deleting "2934.90.90" and inserting "2934.99.90" in lieu thereof.

(112)(a). Heading 2937 and all subordinate subheadings and text are superseded by:

"2937	Hormones, prostaglandins, thromboxanes and leukotrienes, natural or reproduced by synthesis; derivatives and structural analogues thereof, including chain modified polypeptides, used primarily as hormones:			
	Polypeptide hormones, protein hormones and glycoprotein hormones, their derivatives and structural analogues:			
2937.11.00	Somatotropin, its derivatives and structural analogues	Free		10%
2937.12.00	Insulin and its salts	Free		10%
2937.19.00	Other	Free		25%
	Steroidal hormones, their derivatives and structural analogues:			
2937.21.00	Cortisone, hydrocortisone, prednisone (Dehydrocortisone) and prednisolone (Dehydrohydrocortisone)	Free		25%
2937.22.00	Halogenated derivatives of corticosteroidal hormones	Free		25%

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	:[Hormones, prostaglandins,...]	:	:	:
	: [Steroidal hormones, their derivatives and...]	:	:	:
2937.23	: Estrogens and progestins:	:	:	:
2937.23.10	: Obtained directly or indirectly from	:	:	:
	: animal or vegetable materials	: Free	:	: 25%
	:	:	:	:
	: Other:	:	:	:
2937.23.25	: Estradiol benzoate; and	:	:	:
	: Estradiol cyclopentylpropionate	:	:	:
	: (Estradiol cypionate)	: Free	:	: 15.4¢/kg +
	:	:	:	: 49%
2937.23.50	: Other	: Free	:	: 15.4¢/kg +
	:	:	:	: 78.5%
2937.29	: Other:	:	:	:
2937.29.10	: Desonide; and	:	:	:
	: Nandrolone phenpropionate	: Free	:	: 15.4¢/kg +
	:	:	:	: 49%
2937.29.90	: Other	: Free	:	: 25%
	: Catecholamine hormones, their derivatives and	:	:	:
	: structural analogues:	:	:	:
2937.31.00	: Epinephrine	: Free	:	: 15.4¢/kg +
	:	:	:	: 49%
2937.39	: Other:	:	:	:
2937.39.10	: Epinephrine hydrochloride	: Free	:	: 15.4¢/kg +
	:	:	:	: 49%
2937.39.90	: Other	: Free	:	: 25%
2937.40	: Amino-acid derivatives:	:	:	:
2937.40.10	: *l*-Thyroxine (Levothyroxine), sodium	: Free	:	: 15.4¢/kg +
	:	:	:	: 49%
2937.40.90	: Other	: Free	:	: 25%
2937.50.00	: Prostaglandins, thromboxanes and leukotrienes,	:	:	:
	: their derivatives and structural analogues	: Free	:	: 25%
	:	:	:	:
2937.90.00	: Other	: Free	:	: 25%"

(b). Subheadings 3002.10.00 and 3002.90.50 are renumbered as 3002.10.01 and 3002.90.51, respectively.

(113)(a). Subheading 2939.10 and all subordinate subheadings and text to such subheading are superseded by:

	:[Vegetable alkaloids, natural or reproduced...]	:	:	:
	: "Alkaloids of opium and their derivatives; salts		:	:
	: thereof:	:	:	:
2939.11.00	: Concentrates of poppy straw;	:	:	:
	: buprenorphine (INN), codeine,	:	:	:
	: dihydrocodeine (INN), ethylmorphine,	:	:	:
	: etorphine (INN), heroin, hydrocodone (INN),	:	:	:
	: hydromorphone (INN), morphine,	:	:	:
	: nicomorphine (INN), oxycodone (INN),	:	:	:
	: oxymorphone (INN), pholcodine (INN),	:	:	:
	: thebacon (INN) and thebaine; salts thereof	: Free	:	: 15.4¢/kg +
	:	:	:	: 50%
2939.19	: Other:	:	:	:
2939.19.10	: Papaverine and its salts	: Free	:	: 15.4¢/kg +
	:	:	:	: 104%
	: Other:	:	:	:
2939.19.20	: Synthetic	: Free	:	: 15.4¢/kg +
	:	:	:	: 50%
2939.19.50	: Other	: Free	:	: 10.6¢/g"

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(b). Subheading 1302.19.20 is renumbered as 1302.19.21.

(114)(a). The following subheading is inserted in numerical sequence:

	:[Vegetable alkaloids, natural or reproduced...]	:	:	:
	: [Ephedrines and their salts:]	:	:	:
"2939.43.00	: Cathine (INN) and its salts	: Free	:	: 15.4¢/kg + 59%"

(b). Subheading 2939.49.00 is renumbered as 2939.49.01.

(115). Subheading 2939.50.00 is superseded by:

	:[Vegetable alkaloids, natural or reproduced...]	:	:	:
	: "Theophylline and aminophylline	:	:	:
	: (theophylline-ethylenediamine) and their	:	:	:
	: derivatives; salts thereof:	:	:	:
2939.51.00	: Fenetylline (INN) and its salts	: Free	:	: 25%
2939.59.00	: Other	: Free	:	: 25%"

(116)(a). Subheading 2939.70.00 is deleted.

(b). Subheadings 2939.90, 2939.90.10 and 2939.90.50 are superseded by:

	:[Vegetable alkaloids, natural or reproduced...]	:	:	:
	: "Other:	:	:	:
2939.91.00	: Cocaine, ecgonine, levometamfetamine,	:	:	:
	: metamfetamine (INN), metamfetamine	:	:	:
	: racemate; salts, esters and other derivatives	:	:	:
	: thereof	: Free	:	: 25%
	:	:	:	:
2939.99.00	: Other	: Free	:	: 25%"

(117). The article description of heading 2940.00 is modified to read:

"Sugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; sugar ethers, sugar acetals and sugar esters, and their salts, other than products of heading 2937, 2938 or 2939;"

(118). Note 1(a) to chapter 30 is superseded by:

"(a) Foods or beverages (such as dietetic, diabetic or fortified foods, food supplements, tonic beverages and mineral waters), other than nutritional preparations for intravenous administration (section IV);

(119)(a). Note 4(g) to chapter 30 is modified by deleting the word "and" after the semicolon.

(b). Note 4(h) to chapter 30 is superseded by:

"(h) Chemical contraceptive preparations based on hormones, on other products of heading 2937 or on spermicides;"

(c). The following notes 4(ij) and 4(k) are inserted in alphabetical sequence:

"(ij) Gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments; and

(k) Waste pharmaceuticals, that is, pharmaceutical products which are unfit for their original intended purpose due to, for example, expiry of shelf life."

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(120). The article description of heading 3004 is modified to read:

"Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale:"

(121). The article description of subheading 3004.32.00 is modified to read:

"Containing corticosteroid hormones, their derivatives and structural analogues"

(122). The article description of subheading 3006.60.00 is modified to read:

"Chemical contraceptive preparations based on hormones, on other products of heading 2937 or on spermicides"

(123)(a). The following subheadings are inserted in numerical sequence:

	:[Pharmaceutical goods specified in note 4...]	:	:	:
"3006.70.00	: Gel preparations designed to be used in human	:	:	:
	: or veterinary medicine as a lubricant for parts of	:	:	:
	: the body for surgical operations or physical	:	:	:
	: examinations or as a coupling agent between the	:	:	:
	: body and medical instruments.....	: 5%	: Free (A+,CA,D,E,	: 25%
	:	:	: IL,J,JO,K,	:
	:	:	: MX)	:
3006.80.00	: Waste pharmaceuticals.....	: Free	:	: 45%"

(b). Subheading 3824.90.90 is renumbered as 3824.90.91.

(c). Conforming change: The article description of headings 9902.29.83, 9902.38.10 and 9902.38.25 is modified by deleting "3824.90.90" and inserting "3824.90.91" in lieu thereof.

(124). The article description of subheading 3206.11.00 is modified to read:

"Containing 80 percent or more by weight of titanium dioxide calculated on the dry matter"

(125). The article description of heading 3401 is modified to read:

"Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, molded pieces or shapes, whether or not containing soap; organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent:"

(126)(a). The following subheadings are inserted in numerical sequence:

	:[Soap; organic surface-active products and...]	:	:	:
"3401.30	: Organic surface-active products and preparations	:	:	:
	: for washing the skin, in the form of liquid or cream	:	:	:
	: and put up for retail sale, whether or not	:	:	:
	: containing soap:	:	:	:
3401.30.10	: Containing any aromatic or modified aromatic	:	:	:
	: surface-active agent.....	: 4%	: Free (A*,CA,E,IL,	: 15.4¢/kg +
	:	:	: J,JO,K,MX)	: 53.5%
3401.30.50	: Other.....	: Free	:	: 25%"

(b). Subheadings 3402.20.10 and 3402.20.50 are renumbered as 3402.20.11 and 3402.20.51, respectively.

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(c). Conforming change: General note 4(d) is modified by deleting "3402.20.10 India" and inserting "3401.30.10 India" and "3402.20.11 India" in numerical sequence in lieu thereof.

(127). The article description of subheading 3404.20.00 is modified to read:

"Of poly(oxyethylene) (polyethylene glycol)"

(128). The article description of subheading 3506.91.00 is modified to read:

"Adhesives based on polymers of headings 3901 to 3913 or on rubber"

(129)(a). Subheadings 3702.91.00 and 3702.92.00 are superseded by:

	:[Photographic film in rolls, sensitized,...]	:	:	:
	: [Other:]	:	:	:
"3702.91.01	: Of a width not exceeding 16 mm.....	: 3.7%	: Free (A*,CA,E,IL, J,JO,MX)	: 25%

(b). Conforming change: General note 4(d) is modified by deleting "3702.91.00 India" and "3702.92.00 India" and inserting "3702.91.01 India" in lieu thereof.

(130)(a). Note 1(a)(4) to chapter 38 is superseded by:

"(4) Certified reference materials specified in note 2 below;

(5) Products specified in note 3(a) or 3(c) below;"

(b). Note 1(b) to chapter 38 is modified by deleting the "." at the end of the note and inserting a ";" in lieu thereof.

(c). Notes 1(c) and 1(d) to chapter 38 are redesignated as 1(d) and 1(e), respectively, and the redesignated note 1(d) is modified by deleting the "." at the end of such note and inserting "; or" in lieu thereof.

(d). The following note is 1(c) is inserted in alphabetical sequence:

"(c) Ash and residues (including sludges, other than sewage sludge), containing metals, arsenic or their mixtures and meeting the requirements of note 3(a) or 3(b) to chapter 26 (heading 2620);"

(131)(a). Note 2 to chapter 38 is redesignated as note 3.

(b). The following note to chapter 38 is inserted in numerical sequence:

"2. (a) For the purposes of heading 3822.00, the expression "certified reference materials" means reference materials which are accompanied by a certificate which indicates the values of the certified properties, the methods used to determine these values and the degree of certainty associated with each value and which are suitable for analytical, calibrating or referencing purposes.

(b) With the exception of the products of chapter 28 or 29, for the classification of certified reference materials, heading 3822 shall take precedence over any other heading in the tariff schedule."

(132). The following notes to chapter 38 are inserted in numerical sequence:

"4. Throughout the tariff schedule, "municipal waste" means waste of a kind collected from households, hotels, restaurants, hospitals, shops, offices, etc., road and pavement sweepings, as well as construction and demolition waste. Municipal waste generally contains a large variety of materials such as plastics, rubber, wood, paper, textiles, glass, metals, food materials, broken furniture and other damaged or discarded articles. The term "municipal waste", however, does not cover:

(a) Individual materials or articles segregated from the waste, such as wastes of plastics, rubber, wood, paper, textiles, glass or metals and spent batteries, which fall in their appropriate headings of the tariff schedule;

(b) Industrial waste;

(c) Waste pharmaceuticals, as defined in note 4(k) to chapter 30; or

(d) Clinical waste, as defined in note 6(a) below.

5. For the purposes of heading 3825, the expression "sewage sludge" means sludge arising from urban effluent treatment plants and includes pre-treatment waste, scourings and unstabilized sludge. Stabilized sludge, when suitable for use as fertilizer, is excluded (chapter 31).

6. For the purposes of heading 3825, the expression "other wastes" applies to:

(a) Clinical waste, that is, contaminated waste arising from medical research, diagnosis, treatment or other medical, surgical, dental or veterinary procedures, which often contain pathogens and pharmaceutical substances and require special disposal procedures (for example, soiled dressings, used gloves and used syringes);

(b) Waste organic solvents;

(c) Wastes of metal pickling liquors, hydraulic fluids, brake fluids and anti-freezing fluids; and

(d) Other wastes from chemical or allied industries.

The expression "other wastes" does not, however, cover wastes which contain mainly petroleum oils or oils obtained from bituminous minerals (heading 2710)."

(133). The following subheading note and title to chapter 38 are inserted after new note 6 to chapter 38:

"Subheading Note

1. For the purposes of subheadings 3825.41.00 and 3825.49.00, "waste organic solvents" are wastes containing mainly organic solvents, not fit for further use as presented as primary products, whether or not intended for recovery of the solvents."

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(134). Heading 3817 and all subordinate subheadings and text thereto are superseded by:

"3817.00	Mixed alkylbenzenes and mixed alkylnaphthalenes, other than those of heading 2707 or 2902:			
	Mixed alkylbenzenes:			
3817.00.10	Mixed linear alkylbenzenes	[See Annex III(A) to this proclamation]	Free (A+,CA,D,E, IL,J) [See Annex III(B) to this proclamation](MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 55%
3817.00.15	Other	[See Annex III(A) to this proclamation	Free (A*,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	15.4¢/kg + 55%
3817.00.20	Mixed alkylnaphthalenes	[See Annex III(A) to this proclamation	Free (A+,CA,D,E, IL,J,MX) [See Annex III(D)2 to this proclamation](JO)	3.7¢/kg + 60%"

(b). Conforming change: General note 4(d) is modified by deleting "3817.10.50 India" and inserting "3817.00.15 India" in lieu thereof.

(135). Headings 3822.00 and all subordinate subheadings are superseded by:

"3822.00	Diagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials:			
	Diagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006:			
3822.00.10	Containing antigens or antisera	Free		Free
3822.00.50	Other	Free		25%
3822.00.60	Certified reference materials	Free		25%"

(136). The article description for heading 3824 is modified to read:

"Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:"

(137). The following provisions are inserted in numerical sequence:

"3825	Residual products of the chemical or allied industries, not elsewhere specified or included; municipal waste; sewage sludge; other wastes specified in note 6 to this chapter:			
3825.10.00	Municipal waste	Free		Free
3825.20.00	Sewage sludge	Free		Free
	Waste organic solvents:			
3825.41.00	Halogenated	Free		Free
3825.49.00	Other	Free		Free
3825.50.00	Wastes of metal-pickling liquors, hydraulic fluids, brake fluids and anti-freeze fluids	Free		Free

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	:[Residual products of the chemical or...]	:	:	:
	: Other wastes from the chemical or allied industries:	:	:	:
3825.61.00	: Mainly containing organic constituents	: Free	:	: Free
3825.69.00	: Other	: Free	:	: Free
3825.90.00	: Other	: Free	:	: Free"

(138)(a). The title "Subheading Note" in chapter 39 is modified to read "Subheading Notes".

(b). The following subheading note to chapter 39 is inserted in numerical sequence:

"2. For the purposes of subheading 3920.43, the term "plasticizers" includes secondary plasticizers."

(139). The article description of subheading 3904.10.00 is modified to read:

"Poly(vinyl chloride), not mixed with any other substances"

(140). The superior text immediately preceding subheading 3904.21.00 is modified to read:

"Other poly(vinyl chloride):"

(141). The superior text immediately preceding subheading 3905.12.00 is modified to read:

"Poly(vinyl acetate):"

(142). The article description of subheading 3905.30.00 is modified to read:

"Poly(vinyl alcohol), whether or not containing unhydrolyzed acetate groups"

(143). The article description of subheading 3906.10.00 is modified to read:

"Poly(methyl methacrylate)"

(144). The article description of subheading 3907.60.00 is modified to read:

"Poly(ethylene terephthalate)"

(145)(a). Subheadings 3917.32, 3917.32.20 and 3917.32.60 are superseded by:

	:[Tubes, pipes and hoses and fittings therefor...]	:	:	:
	: [Other tubes, pipes and hoses:]	:	:	:
"3917.32.00	: Other, not reinforced or otherwise combined	:	:	:
	: with other materials, without fittings	: 3.1%	: Free (A,B,CA,E,IL,	: 25%"
	:	:	: J,JO,MX)	:

(b). Conforming change: The following subheading is inserted in numerical sequence:

	:[Other articles of plastics and articles of other...]	:	:	:
	: [Other):]	:	:	:
"3926.90.96	: Casing for bicycle derailleur cables; and	:	:	:
	: Casing for cable or inner wire for caliper and	:	:	:
	: cantilever brakes, whether or not cut to	:	:	:
	: length	: Free	:	: 25%"

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(146). Subheadings 3920.41.00, 3920.42, 3920.42.10 and 3920.42.50 are superseded by:

	:[Other plates, sheets, film, foil and strip,...]	:	:	:
	: [Of polymers of vinyl chloride:]	:	:	:
"3920.43	: Containing by weight not less than 6 percent	:	:	:
	: of plasticizers:	:	:	:
3920.43.10	: Made in imitation of patent leather.....	: 3.1%	: Free (A,CA,E,IL,	: 25%
	:	:	: J,JO,MX)	:
3920.43.50	: Other.....	: 4.2%	: Free (A,CA,E,IL,	: 25%
	:	:	: J,JO,MX)	:
3920.49.00	: Other.....	: 5.8%	: Free (A,CA,E,IL,	: 35%"
	:	:	: J,MX)	:
	:	:	: [See Annex III(D)2	:
	:	:	: to this	:
	:	:	: proclamation](JO)	:

(147). The article description of subheading 3920.51 is modified to read:

"Of poly(methyl methacrylate):"

(148). The article description of subheading 3920.62.00 is modified to read:

"Of poly(ethylene terephthalate)"

(149). The article description of subheading 3920.91.00 is modified to read:

"Of poly(vinyl butyral)"

(150). The article description of heading 3922 is modified to read:

"Baths, shower baths, sinks, washbasins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware, of plastics:"

(151). The article description of subheading 3922.10.00 is modified to read:

"Baths, shower baths, sinks and washbasins"

(152). The article description of subheading 3926.20 is modified to read:

"Articles of apparel and clothing accessories (including gloves, mittens and mitts):"

(153). The superior text immediately preceding subheading 3926.20.10 is modified to read:

"Gloves, mittens and mitts:"

(154). Note 2(f) to chapter 40 is superseded by:

"(f). Articles of chapter 95 (other than sports gloves, mittens and mitts and articles of headings 4011 to 4013)."

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(155)(a). Subheadings 4009.10.00, 4009.20.00, 4009.30.00, 4009.40.00 and 4009.50.00 are superseded by:

	:[Tubes, pipes and hoses, of vulcanized rubber...]			
	: "Not reinforced or otherwise combined with other materials:			
4009.11.00	: Without fittings	: 2.5%	: Free (A,B,CA,E,IL,J,JO,MX)	: 25%
4009.12.00	: With fittings	: 2.5%	: Free (A,B,C,CA,E,IL,J,JO,MX)	: 25%
	: Reinforced or otherwise combined only with metal:			
4009.21.00	: Without fittings	: 2.5%	: Free (A,B,CA,E,IL,J,JO,MX)	: 25%
4009.22.00	: With fittings	: 2.5%	: Free (A,B,C,CA,E,IL,J,JO,MX)	: 25%
	: Reinforced or otherwise combined only with textile materials:			
4009.31.00	: Without fittings	: 2.5%	: Free (A,B,CA,E,IL,J,JO,MX)	: 25%
4009.32.00	: With fittings	: 2.5%	: Free (A,B,C,CA,E,IL,J,JO,MX)	: 25%
	: Reinforced or otherwise combined with other materials:			
4009.41.00	: Without fittings	: 2.5%	: Free (A,B,CA,E,IL,J,JO,MX)	: 25%
4009.42.00	: With fittings	: 2.5%	: Free (A,B,C,CA,E,IL,J,JO,MX)	: 25%"

(156). Subheadings 4010.21 through 4010.29.90 and any intervening text to such subheadings are superseded by:

	:[Conveyor or transmission belts or belting,...]			
	: [Transmission belts or belting:]			
"4010.31	: Endless transmission belts of trapezoidal cross-section (V-belts), V-ribbed, of an outside circumference exceeding 60 cm but not exceeding 180 cm:			
4010.31.30	: Combined with textile materials	: 3.4%	: Free (A+,B,CA,D,E,IL,J,JO,MX)	: 30%
4010.31.60	: Other	: 2.8%	: Free (A,CA,E,IL,J,JO,MX)	: 25%
4010.32	: Endless transmission belts of trapezoidal cross-section (V-belts), other than V-ribbed, of an outside circumference exceeding 60 cm but not exceeding 180 cm:			
4010.32.30	: Combined with textile materials	: 3.4%	: Free (A+,B,CA,D,E,IL,J,JO,MX)	: 30%
4010.32.60	: Other	: 2.8%	: Free (A,CA,E,IL,J,JO,MX)	: 25%
4010.33	: Endless transmission belts of trapezoidal cross-section (V-belts), V-ribbed, of an outside circumference exceeding 180 cm but not exceeding 240 cm:			
4010.33.30	: Combined with textile materials	: 3.4%	: Free (A+,B,CA,D,E,IL,J,JO,MX)	: 30%
4010.33.60	: Other	: 2.8%	: Free (A,CA,E,IL,J,JO,MX)	: 25%

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	[Conveyor or transmission belts or belting,...]		
	[Transmission belts or belting:]		
4010.34	Endless transmission belts of trapezoidal cross-section (V-belts), other than V-ribbed, of an outside circumference exceeding 180 cm but not exceeding 240 cm:		
4010.34.30	Combined with textile materials	3.4%	Free (A+,B,CA,D, E,IL,J,JO, MX)	30%
4010.34.60	Other	2.8%	Free (A,CA,E,IL, J,JO,MX)	25%
4010.35	Endless synchronous belts, of an outside circumference exceeding 60 cm but not exceeding 150 cm:			
	Combined with textile materials:			
4010.35.30	With textile components in which vegetable fibers predominate by weight over any other single textile fiber	4.1%	Free (A,CA,E,IL, J,JO,MX)	30%
	With textile components in which man-made fibers predominate by weight over any other single textile fiber:			
4010.35.41	Of a width exceeding 20 cm	8%	Free (A,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	74%
4010.35.45	Other	6.4%	Free (A,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	74%
4010.35.50	Other	1.9%	Free (A+,CA,D,E, IL,J JO,) [See Annex III(B) to this proclamation](MX)	25%
4010.35.90	Other	3.3%	Free (A,CA,E,IL, J,JO,MX)	25%
4010.36	Endless synchronous belts, of an outside circumference exceeding 150 cm but not exceeding 198 cm:			
	Combined with textile materials:			
4010.36.30	With textile components in which vegetable fibers predominate by weight over any other single textile fiber	4.1%	Free (A,CA,E,IL, J,JO,MX)	30%
	With textile components in which man-made fibers predominate by weight over any other single textile fiber:			
4010.36.41	Of a width exceeding 20 cm	8%	Free (A,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	74%

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	[Conveyor or transmission belts or belting,...]			
	[Transmission belts or belting:]			
	[Endless synchronous belts, of an...]			
	[Combined with textile materials:]			
	[With textile components...]			
4010.36.45	Other	6.4%	Free (A,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	74%
4010.36.50	Other	1.9%	Free (A+,CA,D,E, IL,J,JO) [See Annex III(B) to this proclamation](MX)	25%
4010.36.90	Other	3.3%	Free (A,CA,E,IL, J,JO,MX)	25%
4010.39	Other:			
	Of trapezoidal cross section (V-belts and belting):			
4010.39.10	Combined with textile materials	3.4%	Free (A+,B,CA,D, E,IL,J,JO, MX)	30%
4010.39.20	Other	2.8%	Free (A,CA,E,IL, J,JO,MX)	25%
	Other:			
	Combined with textile materials:			
4010.39.30	With textile components in which vegetable fibers predominate by weight over any other single textile fiber	4.1%	Free (A,CA,E,IL, J,JO,MX)	30%
	With textile components in which man-made fibers predominate by weight over any other single textile fiber:			
4010.39.41	Of a width exceeding 20 cm	8%	Free (A,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	74%
4010.39.45	Other	6.4%	Free (A,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	74%
4010.39.50	Other	1.9%	Free (A+,CA,D,E, IL,J,JO) [See Annex III(B) to this proclamation](MX)	25%
4010.39.90	Other	3.3%	Free (A,CA,E,IL, J,JO,MX)	25%"

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(157)(a). The superior text immediately preceding subheading 4011.91, subheadings 4011.91 through 4011.99.80 and any intervening text to such subheadings are superseded by:

	:[New pneumatic tires, of rubber:]	:	:	:
	: "Other, having a "herring-bone" or similar tread:	:	:	:
4011.61.00	: Of a kind used on agricultural or forestry vehicles and machines	: Free	:	: Free
4011.62.00	: Of a kind used on construction or industrial handling vehicles and machines and having a rim size not exceeding 61 cm	: Free	:	: 10%
4011.63.00	: Of a kind used on construction or industrial handling vehicles and machines and having a rim size exceeding 61 cm	: Free	:	: 10%
4011.69.00	: Other	: Free	:	: 10%
	: Other:	:	:	:
4011.92.00	: Of a kind used on agricultural or forestry vehicles and machines	: Free	:	: Free
4011.93	: Of a kind used on construction or industrial handling vehicles and machines and having a rim size not exceeding 61 cm:	:	:	:
4011.93.40	: Radial	: 4%	: Free (A,CA,E,IL,J, JO,MX)	: 10%
4011.93.80	: Other	: 3.4%	: Free (A,CA,E,IL,J, JO,MX)	: 10%
4011.94	: Of a kind used on construction or industrial handling vehicles and machines and having a rim size exceeding 61 cm:	:	:	:
4011.94.40	: Radial	: 4%	: Free (A,CA,E,IL,J, JO,MX)	: 10%
4011.94.80	: Other	: 3.4%	: Free (A,CA,E,IL,J, JO,MX)	: 10%
4011.99	: Other:	:	:	:
4011.99.45	: Radial	: 4%	: Free (A,CA,E,IL,J, JO,MX)	: 10%
4011.99.85	: Other	: 3.4%	: Free (A,CA,E,IL,J, JO,MX)	: 10%"

(b). Conforming changes:

(A). The article description of headings 9902.84.79, 9902.84.81 and 9902.84.83 is modified by deleting "subheading 4011.91.50 or subheading 4011.99.40" and inserting "subheadings 4011.63.00 or 4011.69.00 or subheadings 4011.94.40 or 4011.99.45" in lieu thereof.

(B). The article description of heading 9902.84.85, 9902.84.87, 9902.84.89 and 9902.84.91 is modified by deleting "subheading 4011.91 or subheading 4011.99" and inserting "subheadings 4011.61.00, 4011.63.00 or 4011.69.00 or subheadings 4011.92.00, 4011.94.40 or 4011.99.45" in lieu thereof.

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(158)(a). The article description of heading 4012 is modified to read:

"Retreaded or used pneumatic tires of rubber; solid or cushion tires, tire treads and tire flaps, of rubber:"

(b). Subheadings 4012.10 through 4012.10.80 and any intervening text are superseded by:

	:[Retreaded or used pneumatic tires of...]	:	:	:
	: "Retreaded tires:	:	:	:
4012.11	: Of a kind used on motor cars (including station	:	:	:
	: wagons and racing cars):	:	:	:
4012.11.40	: Radial	: 4%	: Free (A,CA,E,IL, J,JO,MX)	: 10%
4012.11.80	: Other	: 3.4%	: Free (A,CA,E,IL, J,JO,MX)	: 10%
4012.12	: Of a kind used on buses or trucks:	:	:	:
4012.12.40	: Radial	: 4%	: Free (A,CA,E,IL, J,JO,MX)	: 10%
4012.12.80	: Other	: 3.4%	: Free (A,CA,E,IL, J,JO,MX)	: 10%
4012.13.00	: Of a kind used on aircraft	: Free	:	: 30%
4012.19	: Other:	:	:	:
4012.19.20	: Designed for tractors provided for in subheading 8701.90.10 or for agricultural or horticultural machinery or implements provided for in chapter 84 or in subheading 8716.80.10	: Free	:	: Free
	: Other:	:	:	:
4012.19.40	: Radial	: 4%	: Free (A,CA,E,IL, J,JO,MX)	: 10%
4012.19.80	: Other	: 3.4%	: Free (A,CA,E,IL, J,JO,MX)	: 10%"

(159)(a). The article description of heading 4015 is modified to read:

"Articles of apparel and clothing accessories (including gloves, mittens and mitts), for all purposes, of vulcanized rubber other than hard rubber:"

(b). The superior text immediately preceding subheading 4015.11.00 is modified to read:

"Gloves, mittens and mitts:"

(c). The article description of subheading 4015.11.00 is modified to read "Surgical" and 4015.11.00 is renumbered as 4015.11.01.

(d). Subheadings 4015.19.10 and 4015.19.50 are superseded by:

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	:[Articles of apparel and clothing accessories...]	:	:	:
	: [Gloves, mittens and mitts:]	:	:	:
	: [Other:]	:	:	:
"4015.19.05	: Medical	: Free	:	: 25%
	: Other:	:	:	:
4015.19.10	: Seamless	: 3%	: Free (A,CA,E,IL, J,JO,MX)	: 25%
4015.19.50	: Other	: 14%	: Free (A+,CA,D,E, IL,J,MX) : [See Annex III(D)2 to this proclamation](JO)	: 75%"

(160)(a). Note 2 to chapter 41 is redesignated as note 3 and the expression "heading 4111" is deleted and "heading 4115" inserted in lieu thereof.

(b). The following note to chapter 41 is inserted in numerical sequence:

"2. (a) Headings 4104 to 4106 do not cover hides and skins which have undergone a tanning (including pre-tanning) process which is reversible (headings 4101 to 4103, as the case may be).

(b) For the purposes of headings 4104 to 4106, the term "crust" includes hides and skins that have been retanned, colored or fat-liquored (stuffed) prior to drying."

(161). Additional U.S. note 1 to chapter 41 is modified by deleting "heading 4109" and inserting "subheading 4114.20" in lieu thereof.

(162). The article description of heading 4101 is modified by inserting "(including buffalo)" after "Raw hides and skins of bovine".

(163)(a). Subheadings 4101.10.00 through 4101.40.00 and any intervening text to such subheadings are superseded by:

	:[Raw hides and skins of bovine (including...]	:	:	:
"4101.20	: Whole hides and skins, of a weight per skin not exceeding 8 kg when simply dried, 10 kg when dry-salted, or 16 kg when fresh, wet-salted or otherwise preserved:	:	:	:
4101.20.10	: Not pretanned	: Free	:	: 10%
	: Other:	:	:	:
	: Of bovine animals (including buffalo):	:	:	:
	: Of a unit surface area not not exceeding 28 square feet (2.6 m^2):	:	:	:
4101.20.20	: Upper and lining	: Free	:	: 15%
4101.20.30	: Other	: 2.4%	: Free (A+,CA,D,E, IL,J,JO) : [See Annex III(B) to this proclamation](MX)	: 15%
	: Other:	:	:	:
4101.20.35	: Of buffalo	: 2.4%	: Free (A*,CA,E,IL, J,JO,MX)	: 25%

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	[Raw hides and skins of bovine (including...]		
	[Whole hides and skins, of a weight...]		
	[Other:]		
	[Of bovine animals (including buffalo):]		
	[Other:]		
	Other:		
4101.20.40	Vegetable pretanned	5%	Free (A*,CA,E,IL, J,JO,MX)	25%
4101.20.50	Other	3.3%	Free (A*,CA,E,IL, J,JO,MX)	25%
4101.20.70	Other	3.3%	Free (A*,CA,E,IL, J,JO,MX)	25%
4101.50	Whole hides and skins, of a weight exceeding 16 kg:			
4101.50.10	Not pretanned	Free		10%
	Other:			
	Of bovine animals (including buffalo):			
	Of a unit surface area not not exceeding 28 square feet (2.6 m^2):			
4101.50.20	Upper and lining	Free		15%
4101.50.30	Other	2.4%	Free (A+,CA,D,E, IL,J,JO) [See Annex III(B) to this proclamation)(MX)	15%
	Other:			
4101.50.35	Of buffalo	2.4%	Free (A*,CA,E,IL, J,JO,MX)	25%
	Other:			
4101.50.40	Vegetable pretanned	5%	Free (A*,CA,E,IL, J,JO,MX)	25%
4101.50.50	Other	3.3%	Free (A*,CA,E,IL, J,JO,MX)	25%
4101.50.70	Other	3.3%	Free (A*,CA,E,IL, J,JO,MX)	25%
4101.90	Other, including butts, bends and bellies:			
4101.90.10	Not pretanned	Free		10%
	Other:			
	Of bovine animals (including buffalo):			
4101.90.35	Of buffalo	2.4%	Free (A*,CA,E,IL, J,JO,MX)	25%
	Other:			
4101.90.40	Vegetable pretanned	5%	Free (A*,CA,E,IL, J,JO,MX)	25%
4101.90.50	Other	3.3%	Free (A*,CA,E,IL, J,JO,MX)	25%
4101.90.70	Other	3.3%	Free (A*,CA,E,IL, J,JO,MX)	25%*

(b). Conforming change: General note 4(d) is modified by adding, in numerical sequence, the following subheadings and countries set out opposite them:

4101.20.35 India	4101.50.35 India	4101.90.35 India
4101.20.40 Argentina	4101.50.40 Argentina	4101.90.40 Argentina
4101.20.50 Argentina; Brazil	4101.50.50 Argentina; Brazil	4101.90.50 Argentina; Brazil
4101.20.70 Argentina	4101.50.70 Argentina	4101.90.70 Argentina

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(164). Subheadings 4102.10.00 and 4102.29.00 are superseded and the following provisions inserted in numerical sequence:

	[Raw skins of sheep or lambs (fresh, or...]			
"4102.10	With wool on:			
4102.10.10	Not pretanned	Free		Free
	Other:			
4102.10.20	Vegetable pretanned	Free		10%
4102.10.30	Other	2%	Free (A+,CA,D,E, IL,J,JO,MX)	25%
	[Without wool on:]			
4102.29	Other:			
4102.29.10	Not pretanned	Free		Free
	Other:			
4102.29.20	Vegetable pretanned	Free		10%
4102.29.30	Other	2%	Free (A+,CA,D,E, IL,J,JO,MX)	25%"

(165)(a). Subheadings 4103.10.00, 4103.20.00 and 4103.90.00 are superseded by:

	[Other raw hides and skins (fresh, or salted, dried,...]			
"4103.10	Of goats or kids:			
4103.10.10	Not pretanned	Free		Free
	Other:			
4103.10.20	Vegetable pretanned	Free		10%
4103.10.30	Other	3.7%	Free (A*,CA,E,IL, J,JO,MX)	25%
4103.20	Of reptiles:			
4103.20.10	Not pretanned	Free		Free
	Other:			
4103.20.20	Vegetable pretanned	5%	Free (A*,CA,E,IL, J,JO,MX)	25%
4103.20.30	Other	Free		25%
4103.30	Of swine:			
4103.30.10	Not pretanned	Free		Free
4103.30.20	Other	4.2%	Free (A+,CA,D,E, IL,J,JO,MX)	25%
4103.90	Other:			
4103.90.10	Not pretanned	Free		Free
4103.90.20	Other	3.3%	Free (A+,CA,D,E, IL,J,JO,MX)	25%"

(b). Conforming change: General note 4(d) is modified by adding, in numerical sequence, the following subheadings and countries set out opposite them:

4103.10.30 India;
Pakistan
4103.20.20 Argentina

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(166)(a). Headings 4104 through 4111.00.00 and all subordinate subheadings and thereto to such subheadings are superseded by:

"4104	Tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared:			
	In the wet state (including wet-blue):			
4104.11	Full grains, unsplit; grain splits:			
	Whole bovine leather, of a unit surface area not exceeding 28 square feet (2.6 m^2):			
4104.11.10	Upper leather; lining leather	Free		15%
4104.11.20	Other	2.4%	Free (A+,CA,D,E, IL,J,JO) [See Annex III(B) to this proclamation](MX)	15%
	Other:			
4104.11.30	Buffalo	2.4%	Free (A*,CA,E,IL, J,JO,MX)	25%
	Other:			
4104.11.40	Upper leather; sole leather	5%	Free (A*,CA,E,IL, J,JO,MX)	25%
4104.11.50	Other	3.3%	Free (A*,CA,E,IL, J,JO,MX)	25%
4104.19	Other:			
	Whole bovine leather, of a unit surface area not exceeding 28 square feet (2.6 m^2):			
4104.19.10	Upper leather; lining leather	Free		15%
4104.19.20	Other	2.4%	Free (A+,CA,D,E, IL,J,JO) [See Annex III(B) to this proclamation](MX)	15%
	Other:			
4104.19.30	Buffalo	2.4%	Free (A*,CA,E,IL, J,JO,MX)	25%
	Other:			
4104.19.40	Upper leather; sole leather	5%	Free (A*,CA,E,IL, J,JO,MX)	25%
4104.19.50	Other	3.3%	Free (A*,CA,E,IL, J,JO,MX)	25%
	In the dry state (crust):			
4104.41	Full grains, unsplit; grain splits:			
	Whole bovine leather, of a unit surface area not exceeding 28 square feet (2.6 m^2):			
4104.41.10	Upper leather; lining leather	Free		15%
4104.41.20	Other	2.4%	Free (A+,CA,D,E, IL,J,JO) [See Annex III(B) to this proclamation](MX)	15%
	Other:			
4104.41.30	Buffalo	2.4%	Free (A*,CA,E,IL, J,JO,MX)	25%

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	:[Tanned or crust hides and skins of bovine...]	:	:	:
	: [In the dry state (crust):]	:	:	:
	: [Full grains, unsplit; grain splits:]	:	:	:
	: [Other:]	:	:	:
	: Other:	:	:	:
4104.41.40	: Upper leather; sole leather.....	: 5%	: Free (A*,CA,E,IL, J,JO,MX)	: 25%
4104.41.50	: Other.....	: 3.3%	: Free (A*,CA,E,IL, J,JO,MX)	: 25%
4104.49	: Other:	:	:	:
	: Whole bovine leather, of a unit surface area not exceeding 28 square feet (2.6 m^2):	:	:	:
4104.49.10	: Upper leather; lining leather.....	: Free	:	: 15%
4104.49.20	: Other.....	: 2.4%	: Free (A+,CA,D,E, IL,J,JO) : [See Annex III(B) to this proclamation](MX)	: 15%
	: Other:	:	:	:
4104.49.30	: Buffalo.....	: 2.4%	: Free (A*,CA,E,IL, J,JO,MX)	: 25%
	: Other:	:	:	:
4104.49.40	: Upper leather; sole leather.....	: 5%	: Free (A*,CA,E,IL, J,JO,MX)	: 25%
4104.49.50	: Other.....	: 3.3%	: Free (A*,CA,E,IL, J,JO,MX)	: 25%
4105	: Tanned or crust skins of sheep or lambs, without wool on, whether or not split, but not further prepared:	:	:	:
4105.10	: In the wet state (including wet-blue):	:	:	:
4105.10.10	: Wet blues.....	: 2%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 25%
4105.10.90	: Other.....	: 2%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 25%
4105.30.00	: In the dry state (crust).....	: 2%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 25%
4106	: Tanned or crust hides and skins of other animals, without wool or hair on, whether or not split, but not further prepared:	:	:	:
	: Of goats or kids:	:	:	:
4106.21	: In the wet state (including wet-blue):	:	:	:
4106.21.10	: Wet blues.....	: 2.4%	: Free (A*,CA,E,IL, J,JO,MX)	: 25%
4106.21.90	: Other.....	: 2.4%	: Free (A*,CA,E,IL, J,JO,MX)	: 25%
4106.22.00	: In the dry state (crust).....	: 2.4%	: Free (A*,CA,E,IL, J,JO,MX)	: 25%
	: Of swine:	:	:	:
4106.31	: In the wet state (including wet-blue):	:	:	:
4106.31.10	: Wet blues.....	: 4.2%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 25%
4106.31.90	: Other.....	: 4.2%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 25%
4106.32.00	: In the dry state (crust).....	: 4.2%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 25%
4106.40.00	: Of reptiles.....	: Free	:	: 25%

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	:[Tanned or crust hides and skins of other...]			
	: Other:			
4106.91.00	: In the wet state (including wet-blue).....	: 3.3%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 25%
4106.92.00	: In the dry state (crust).....	: 3.3%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 25%
4107	: Leather further prepared after tanning or crusting, including parchment-dressed leather, of bovine (including buffalo) or equine animals, without hair on, whether or not split, other than leather of heading 4114:			
	: Whole hides and skins:			
4107.11	: Full grains, unsplit:			
	: Of bovines, and of a unit surface area not exceeding 28 square feet (2.6 m^2):			
4107.11.10	: Upper leather; lining leather.....	: Free		: 15%
	: Other:			
4107.11.20	: Not fancy.....	: 2.4%	: Free (A+,CA,D,E, IL,J,JO) : [See Annex III(B) to this proclamation](MX)	: 15%
4107.11.30	: Fancy.....	: 3.6%	: Free (A+,CA,D,E, IL,J,JO) : [See Annex III(B) to this proclamation](MX)	: 30%
	: Other:			
4107.11.40	: Buffalo.....	: 2.5%	: Free (A,CA,E,IL,J, JO,MX)	: 25%
	: Other:			
4107.11.50	: Upholstery leather.....	: 2.8%	: Free (A*,CA,E,IL, J,JO,MX)	: 20%
4107.11.60	: Upper leather; sole leather.....	: 3.3%	: Free (A*,CA,E,IL, J,JO,MX)	: 25%
	: Other:			
4107.11.70	: Not fancy.....	: 5%	: Free (A*,E,CA,IL, J,JO,MX)	: 25%
4107.11.80	: Fancy.....	: 2.4%	: Free (A*,CA,E,IL, J,JO,MX)	: 30%
4107.12	: Grain splits:			
	: Of bovines, and of a unit surface area not exceeding 28 square feet (2.6 m^2):			
4107.12.10	: Upper leather; lining leather.....	: Free		: 15%
	: Other:			
4107.12.20	: Not fancy.....	: 2.4%	: Free (A+,CA,D,E, IL,J,JO) : [See Annex III(B) to this proclamation](MX)	: 15%
4107.12.30	: Fancy.....	: 3.6%	: Free (A+,CA,D,E, IL,J,JO) : [See Annex III(B) to this proclamation](MX)	: 30%
	: Other:			
4107.12.40	: Buffalo.....	: 2.5%	: Free (A,CA,E,IL,J, JO,MX)	: 25%

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	:[Leather further prepared after tanning or...]		
	: [Whole hides and skins:]		
	: [Grain splits:]		
	: [Other:]		
	: Other:		
4107.12.50	: Upholstery leather	: 2.8%	: Free (A*,CA,E,IL, J,JO,MX) : 20%
4107.12.60	: Upper leather; sole leather	: 3.3%	: Free (A*,CA,E,IL, J,JO,MX) : 25%
	: Other:		
4107.12.70	: Not fancy	: 5%	: Free (A*,E,CA,IL, J,JO,MX) : 25%
4107.12.80	: Fancy	: 2.4%	: Free (A*,CA,E,IL, J,JO,MX) : 30%
4107.19	: Other:		
	: Of bovines, and of a unit surface area not exceeding 28 square feet (2.6 m^2):		
4107.19.10	: Upper leather; lining leather	: Free	: 15%
	: Other:		
4107.19.20	: Not fancy	: 2.4%	: Free (A+,CA,D,E, IL,J,JO) : [See Annex III(B) to this proclamation](MX) : 15%
4107.19.30	: Fancy	: 3.6%	: Free (A+,CA,D,E, IL,J,JO) : [See Annex III(B) to this proclamation](MX) : 30%
	: Other:		
4107.19.40	: Buffalo	: 2.5%	: Free (A,CA,E,IL,J, JO,MX) : 25%
	: Other:		
4107.19.50	: Upholstery leather	: 2.8%	: Free (A*,CA,E,IL, J,JO,MX) : 20%
4107.19.60	: Upper leather; sole leather	: 5%	: Free (A*,CA,E,IL, J,JO,MX) : 25%
	: Other:		
4107.19.70	: Not fancy	: 5%	: Free (A*,E,CA,IL, J,JO,MX) : 25%
4107.19.80	: Fancy	: 2.4%	: Free (A*,CA,E,IL, J,JO,MX) : 30%
	: Other, including sides:		
4107.91	: Full grains, unsplit:		
4107.91.40	: Buffalo	: 2.5%	: Free (A,CA,E,IL,J, JO,MX) : 25%
	: Other:		
4107.91.50	: Upholstery leather	: 2.8%	: Free (A*,CA,E,IL, J,JO,MX) : 20%
4107.91.60	: Upper leather; sole leather	: 3.3%	: Free (A*,CA,E,IL, J,JO,MX) : 25%
	: Other:		
4107.91.70	: Not fancy	: 5%	: Free (A*,E,CA,IL, J,JO,MX) : 25%
4107.91.80	: Fancy	: 2.4%	: Free (A*,CA,E,IL, J,JO,MX) : 30%
4107.92	: Grain splits:		
4107.92.40	: Buffalo	: 2.5%	: Free (A,CA,E,IL,J, JO,MX) : 25%

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	:[Leather further prepared after tanning or...]			
	: [Other, including sides:]			
	: [Grain splits:]			
	: Other:			
4107.92.50	: Upholstery leather	: 2.8%	: Free (A*,CA,E,IL, J,JO,MX)	: 20%
4107.92.60	: Upper leather; sole leather	: 3.3%	: Free (A*,CA,E,IL, J,JO,MX)	: 25%
	: Other:			
4107.92.70	: Not fancy	: 5%	: Free (A*,E,CA,IL, J,JO,MX)	: 25%
4107.92.80	: Fancy	: 2.4%	: Free (A*,CA,E,IL, J,JO,MX)	: 30%
4107.99	: Other:			
4107.99.40	: Buffalo	: 2.5%	: Free (A,CA,E,IL,J, JO,MX)	: 25%
	: Other:			
4107.99.50	: Upholstery leather	: 2.8%	: Free (A*,CA,E,IL, J,JO,MX)	: 20%
4107.99.60	: Upper leather; sole leather	: 5%	: Free (A*,CA,E,IL, J,JO,MX)	: 25%
	: Other:			
4107.99.70	: Not fancy	: 5%	: Free (A*,E,CA,IL, J,JO,MX)	: 25%
4107.99.80	: Fancy	: 2.4%	: Free (A*,CA,E,IL, J,JO,MX)	: 30%
4112.00	: Leather further prepared after tanning or crusting, including parchment-dressed leather, of sheep or lamb, without wool on, whether or not split, other than leather of heading 4114:			
4112.00.30	: Not fancy	: 2%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 25%
4112.00.60	: Fancy	: 2%	: Free (A*,CA,E,IL, J,JO,MX)	: 30%
4113	: Leather further prepared after tanning or crusting, including parchment-dressed leather, of other animals, without wool or hair on, whether or not split, other than leather of heading 4114:			
4113.10	: Of goat or kids:			
4113.10.30	: Not fancy	: 2.4%	: Free (A*,CA,E,IL, J,JO,MX)	: 25%
4113.10.60	: Fancy	: 2.8%	: Free (A*,CA,E,IL, J,JO,MX)	: 30%
4113.20.00	: Of swine	: 4.2%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 25%
4113.30	: Of reptiles:			
4113.30.30	: Not fancy	: Free		: 25%
4113.30.60	: Fancy	: Free		: 30%
4113.90	: Other:			
4113.90.30	: Not fancy	: 3.3%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 25%
4113.90.60	: Fancy	: 1.6%	: Free (A*,CA,E,IL, J,JO,MX)	: 30%

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4114	Chamois (including combination chamois) leather; patent leather and patent laminated leather; metallized leather:			
4114.10.00	Chamois (including combination chamois) leather	3.2%	Free (A,CA,E,IL,J,JO,MX)	25%
4114.20	Patent leather and patent laminated leather; metallized leather:			
4114.20.30	Patent leather	2.3%	Free (A+,CA,D,E,IL,J,JO) [See Annex III(B) to this proclamation](MX)	15%
	Patent laminated leather; metallized leather:			
4114.20.40	Calf and kip	3.6%	Free (A+,CA,D,E,IL,J,JO) [See Annex III(B) to this proclamation](MX)	30%
4114.20.70	Other	1.6%	Free (A*,CA,E,IL,J,JO,MX)	30%
4115	Composition leather with a basis of leather or leather fiber, in slabs, sheets or strip, whether or not in rolls; parings and other waste of leather or of composition leather, not suitable for the manufacture of leather articles; leather dust, powder and flour:			
4115.10.00	Composition leather with a basis of leather or leather fiber, in slabs, sheets or strip, whether or not in rolls	Free		10%
4115.20.00	Parings and other waste of leather or of composition leather, not suitable for the manufacture of leather articles; leather dust, powder and flour	Free		10%"

(b). Conforming changes:

(A). General note 4(d) is modified by:

(i). deleting the following subheadings and the countries set out opposite such subheadings:

4104.21.00 Argentina	4104.39.20 India	4106.19.30 India; Pakistan
4104.22.00 Argentina; Brazil	4104.39.40 Argentina	4106.20.30 India; Pakistan
4104.29.30 India	4104.39.50 Argentina; India	4106.20.60 India; Pakistan
4104.29.50 Argentina	4104.39.60 Argentina	4107.21.00 Argentina
4104.29.90 Argentina	4104.39.80 Argentina	4107.90.60 Argentina
4104.31.40 Argentina	4105.20.60 Argentina	4109.00.70 Argentina
4104.31.50 Argentina	4106.12.00 India; Pakistan	
4104.31.60 Argentina	4106.19.20 India	
4104.31.80 Argentina		

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(ii). adding, in numerical sequence, the following subheadings and countries set out opposite them:

4104.11.30 India
4104.11.40 Argentina
4104.11.50 Argentina
4104.19.30 India
4104.19.40 Argentina
4104.19.50 Argentina
4104.41.30 India
4104.41.40 Argentina
4104.41.50 Argentina
4104.49.30 India
4104.49.40 Argentina
4104.49.50 Argentina
4106.21.10 India; Pakistan
4106.21.90 India; Pakistan
4106.22.00 India; Pakistan
4107.11.50 Argentina
4107.11.60 Argentina
4107.11.70 Argentina
4107.11.80 Argentina
4107.12.50 Argentina
4107.12.60 Argentina
4107.12.70 Argentina
4107.12.80 Argentina
4107.19.40 India
4107.19.50 Argentina
4107.19.60 Argentina; India
4107.19.70 Argentina
4107.19.80 Argentina
4107.91.50 Argentina
4107.91.60 Argentina
4107.91.70 Argentina
4107.91.80 Argentina
4107.92.50 Argentina
4107.92.60 Argentina
4107.92.70 Argentina
4107.92.80 Argentina
4107.99.40 India
4107.99.50 Argentina
4107.99.60 Argentina; India
4107.99.70 Argentina
4107.99.80 Argentina
4112.00.60 Argentina
4113.10.30 India; Pakistan
4113.10.60 India; Pakistan
4113.90.60 Argentina
4114.20.70 Argentina

(B). The article description of subheading 9903.41.05 is modified by deleting "4104" and inserting "4104 or 4107" and deleting "4105 or 4106" and inserting "4105, 4106, 4112 or 4113".

(167). Note 1(b) to chapter 42 is modified by deleting "gloves" and inserting "gloves, mittens and mitts" in lieu thereof.

(168). Note 3 to chapter 42 is modified by deleting "gloves (including sports gloves)" and inserting "gloves, mittens and mitts (including those for sport or for protection)" in lieu thereof.

(169). The article description of heading 4202 is modified by deleting "traveling bags, toiletry bags," and inserting "traveling bags, insulated food or beverage bags, toiletry bags," in lieu thereof.

(170)(a). The following provisions are inserted in numerical sequence:

	:[Trunks, suitcases, vanity cases, attache cases,...]	:	:	:
	: [Other:]	:	:	:
	: [With outer surface of sheeting of plastic or...]	:	:	:
	: "Insulated food or beverage bags:	:	:	:
4202.92.05	: With outer surface of textile	:	:	:
	: materials.....	: 7%	: Free (A,CA,E,IL, J,MX)	: 40%
	:	:	: [See Annex III(D)2 to this proclamation](JO)	:
4202.92.10	: Other.....	: 3.4%	: Free (A,CA,E,IL, J,JO,MX)	: 80%"

(b). Subheadings 3924.10.50 and 6307.90.99 are renumbered as 3924.10.40 and 6307.90.98, respectively.

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(c). Conforming changes: The article description of heading 9817.57.01 is modified by deleting "6307.90.99" and inserting "6307.90.98" in lieu thereof.

(171). Note 2(c) to chapter 43 is modified by deleting "Gloves" and inserting "Gloves, mittens and mitts" in lieu thereof.

(172)(a). Subheadings 4301.20.00, 4301.40.00 and 4301.50.00 are deleted.
(b). Subheading 4301.80.00 is renumbered as 4301.80.01.

(173)(a). Subheading 4302.12.00 is deleted.
(b). The following subheading is inserted in numerical sequence:

	:[Tanned or dressed furskins (including heads,...]	:	:	:
	: [Whole skins, with or without head, tail...]	:	:	:
	: [Other:]	:	:	:
"4302.19.55	: Of rabbit or hare.....	: 2.7%	: Free (A,CA,E,IL,J, JO,MX)	: 25%"
	:	:	:	:

(174). Subheading note 1 to chapter 44 is superseded by:

"1. For the purposes of subheadings 4403.41.00 to 4403.49.00, 4407.24.00 to 4407.29.00, 4408.31.00 to 4408.39.00 and 4412.13 to 4412.99, the expression "tropical wood" means one of the following types of wood:

Abura, Acajou d'Afrique, Afrormosia, Ako, Alan, Andiroba, Aningré, Avodiré, Azobé, Balau, Balsa, Bossé clair, Bossé foncé, Cativo, Cedro, Dabema, Dark Red Meranti, Dibétou, Doussié, Framiré, Freijo, Fromager, Fuma, Geronggang, Ilomba, Imbuia, Ipé, Iroko, Jaboty, Jelutong, Jequitiba, Jongkong, Kapur, Kempas, Keruing, Kosipo, Kotibé, Koto, Light Red Meranti, Limba, Louro, Maçaranduba, Mahogany, Makoré, Mandioqueira, Mansonia, Mengkulang, Meranti Bakau, Merawan, Merbau, Merpauh, Mersawa, Moabi, Niangon, Nyatoh, Obeche, Okoumé, Onzabili, Orey, Ovengkol, Ozigo, Padauk, Paldao, Palissandre de Guatemala, Palissandre de Para, Palissandre de Rio, Palissandre de Rose, Pau Amarelo, Pau Marfim, Pulai, Punah, Quaruba, Ramin, Sapelli, Saqui-Saqui, Sepetir, Sipo, Sucupira, Suren, Tauari, Teak, Tiama, Tola, Virola, White Lauan, White Meranti, White Seraya, Yellow Meranti.

(175). The article description of heading 4407 is modified by deleting "finger-jointed" and inserting "end-jointed" in lieu thereof.

(176)(a). The article description of heading 4408 is modified to read:

"Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm:"

(b). HTS subheadings 4408.10.00, 4408.31.00, 4408.39.00 and 4408.90.00 are renumbered as 4408.10.01, 4408.31.01, 4408.39.01 and 4408.90.01, respectively.

(177). The article description of heading 4409 is modified by deleting "edges or faces, whether or not planed, sanded or finger-jointed" and inserting "edges, ends or faces, whether or not planed, sanded or end-jointed" in lieu thereof.

(178)(a). Subheadings 4409.10.10 through 4409.10.90 and any intervening text to such subheadings and subheadings 4409.20.10 through 4409.20.90 and any intervening text to such subheadings are superseded by:

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	:[Wood (including strips and friezes for parquet...]	:	:	:
	: [Coniferous:]	:	:	:
*4409.10.05	: Wood continuously shaped along any of its	:	:	:
	: ends, whether or not also continuously shaped	:	:	:
	: along any of its edges or faces, all the	:	:	:
	: foregoing whether or not planed, sanded or	:	:	:
	: end-jointed	: 3.2%	: Free (A,CA,E,IL, J,JO,MX)	: 33 1/3%
	: Other:	:	:	:
4409.10.10	: Wood siding	: Free	:	: 2.2¢/m²
4409.10.20	: Wood flooring	: Free	:	: 33 1/3%
	: Wood moldings:	:	:	:
	: Standard wood molding:	:	:	:
4409.10.40	: Pine (Pinus spp.)	: Free	:	: 5%
4409.10.45	: Other	: Free	:	: 5%
4409.10.50	: Other	: Free	:	: 40%
	: Wood dowel rods:	:	:	:
4409.10.60	: Plain	: Free	:	: 5%
4409.10.65	: Sanded, grooved, or otherwise	:	:	:
	: advanced in condition	: 4.9%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 33 1/3%
4409.10.90	: Other	: Free	:	: $1.70/m³
	: [Nonconiferous:]	:	:	:
4409.20.05	: Wood continuously shaped along any of its	:	:	:
	: ends, whether or not also continuously shaped	:	:	:
	: along any of its edges or faces, all the	:	:	:
	: foregoing whether or not planed, sanded or	:	:	:
	: end-jointed	: 3.2%	: Free (A,CA,E,IL, J,JO,MX)	: 33 1/3%
	: Other:	:	:	:
4409.20.10	: Wood siding	: Free	:	: 4.3¢/m²
4409.20.25	: Wood flooring	: Free	:	: 8%
	: Wood moldings:	:	:	:
4409.20.40	: Standard wood moldings	: Free	:	: 5%
4409.20.50	: Other	: Free	:	: 40%
	: Wood dowel rods:	:	:	:
4409.20.60	: Plain	: Free	:	: 5%
4409.20.65	: Sanded, grooved or otherwise	:	:	:
	: advanced in condition	: 4.9%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 33 1/3%
4409.20.90	: Other	: Free	:	: $1.70/m³

(b). Subheadings 4418.90.40 and 4421.90.98 are renumbered as 4418.90.45 and 4421.90.97, respectively.

(179). Heading 4410 and all subordinate subheadings and text thereto are superseded by:

*4410	: Particle board and similar board (for example, oriented	:	:	:
	: strand board and waferboard) of wood or other ligneous	:	:	:
	: materials, whether or not agglomerated with resins or	:	:	:
	: other organic binding substances:	:	:	:
	: Oriented strand board and waferboard, of wood:	:	:	:
4410.21.00	: Unworked or not further worked than sanded	: Free	:	: 40%
4410.29.00	: Other	: Free	:	: 40%

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	:[Particle board and similar board...]	:	:	:
	: Other, of wood:	:	:	:
4410.31.00	: Unworked or not further worked than sanded.....	: Free	:	: 40%
4410.32.00	: Surface-covered with melamine-impregnated	:	:	:
	: paper.....	: Free	:	: 40%
	:	:	:	:
4410.33.00	: Surface-covered with decorative laminates of	:	:	:
	: plastics.....	: Free	:	: 40%
	:	:	:	:
4410.39.00	: Other.....	: Free	:	: 40%
4410.90.00	: Other.....	: Free	:	: 20%"

(180)(a). The subheadings listed in the in the first column of the following table are renumbered as the respective subheadings in the second column of the table:

Column 1	Column 2	Column 1	Column 2
4412.13.50	4412.13.51	4412.29.45	4412.29.46
4412.13.90	4412.13.91	4412.29.55	4412.29.56
4412.14.30	4412.14.31	4412.92.05	4412.92.06
4412.14.55	4412.14.56	4412.92.40	4412.92.41
4412.22.05	4412.22.06	4412.92.50	4412.92.51
4412.22.30	4412.22.31	4412.92.90	4412.92.91
4412.22.40	4412.22.41	4412.93.00	4412.93.01
4412.22.50	4412.22.51	4412.99.45	4412.99.46
4412.23.00	4412.23.01	4412.99.55	4412.99.56
4412.29.35	4412.29.36	4412.99.95	4412.99.96

(b). Conforming changes: General note 4(d) is modified by:

(A). deleting the following subheadings and the countries set out opposite such subheadings:

4412.13.50 Brazil; Indonesia
4412.13.90 Brazil; Indonesia
4412.14.30 Brazil
4412.14.55 Brazil
4412.22.30 Brazil; Indonesia
4412.22.40 Brazil; Colombia; Indonesia
4412.29.35 Brazil; Indonesia
4412.29.45 Brazil; Ecuador; Indonesia
4412.92.40 Ecuador
4412.92.50 Guyana
4412.99.55 Colombia

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(B). adding, in numerical sequence, the following subheadings and countries set out opposite them:

4412.13.51 Brazil; Indonesia	4412.22.41 Brazil; Colombia; Indonesia	4412.92.41 Ecuador
4412.13.91 Brazil; Indonesia	4412.29.36 Brazil; Indonesia	4412.92.51 Guyana
4412.14.31 Brazil	4412.29.46 Brazil; Ecuador; Indonesia	4412.99.56 Colombia
4412.14.56 Brazil		
4412.22.31 Brazil; Indonesia		

(181). Subheading 4421.90.94 is superseded by:

	:[Other articles of wood:]	:	:	:	
	: [Other:]	:	:	:	
"4421.90.93	: Theatrical, ballet, and operatic scenery and properties, including sets	: Free	:	:	33 1/3%"

(182)(a). Subheading 4601.10.00 is deleted.

(b). Subheadings 4601.91.20, 4601.91.40 and 4601.99.00 are superseded by:

	:[Plaits and similar products of plaiting...]	:	:	:	
	: [Other:]	:	:	:	
	: [Of vegetable materials:]	:	:	:	
"4601.91.05	: Plaits and similar products of plaiting materials, whether or not assembled into strips	: 2.7%	: Free (A*,CA,E,IL,J, JO,MX)	:	80%
	: Other:	:	:	:	
4601.91.20	: Of one or more of the materials bamboo, rattan, willow or wood	: 6.6%	: Free (A,CA,E,IL,J, MX) [See Annex III(D)2 to this proclamation](JO)	:	45%
4601.91.40	: Other	: Free	:	:	25%
4601.99	: Other:	:	:	:	
4601.99.05	: Plaits and similar products of plaiting materials, whether or not assembled into strips	: 2.7%	: Free (A*,CA,E,IL,J, JO,MX)	:	80%
4601.99.90	: Other	: 3.3%	: Free (A+,CA,D,E, IL,J,JO,MX)	:	25%"

(c). Conforming change: General note 4(d) is modified by deleting "4601.10.00 India" and inserting "4601.91.05 India" and "4601.99.05 India" in lieu thereof.

(183). The article description of heading 4705.00.00 is modified to read:

"Wood pulp obtained by a combination of mechanical and chemical pulping processes"

(184)(a). Notes 1 through 11 to chapter 48 are redesignated as notes 2 through 12, respectively.

(b). The following new note 1 to chapter 48 is inserted in numerical sequence:

"1. For the purposes of this chapter, except where the context otherwise requires, a reference to "paper" includes references to paperboard (irrespective of thickness or weight per m^2)."

(185). Note 3 (previously note 2) to chapter 48 is modified by deleting "Subject to the provisions of note 6," and inserting "Subject to the provisions of note 7," in lieu thereof.

(186). Note 5 (previously note 4) to chapter 48 is superseded by:

"5. For the purposes of heading 4802, the expressions "paper and paperboard, of a kind used for writing, printing or other graphic purposes" and "nonperforated punch-cards and punch tape paper" mean paper and paperboard made mainly from bleached pulp or from pulp obtained by a mechanical or chemi-mechanical process and satisfying any of the following criteria:

For paper or paperboard weighing not more than 150 g/m^2:

(a) Containing 10 percent or more of fibers obtained by a mechanical or chemi-mechanical process, and

1. weighing not more than 80 g/m^2, or

2. colored throughout the mass; or

(b) Containing more than 8 percent ash, and

1. weighing not more than 80 g/m^2, or

2. colored throughout the mass; or

(c) Containing more than 3 percent ash and having a brightness of 60 percent or more; or

(d) Containing more than 3 percent but not more than 8 percent ash, having a brightness less than 60 percent and a burst index equal to or less than 2.5 $kPa \cdot m^2/g$; or

(e) Containing 3 percent ash or less, having a brightness of 60 percent or more and a burst index equal to or less than 2.5 $kPa \cdot m^2/g$.

For paper or paperboard weighing more than 150 g/m^2:

(a) Colored throughout the mass; or

(b) Having a brightness of 60 percent or more, and

1. a caliper of 225 micrometers (microns) or less, or

2. a caliper of more than 225 micrometers but not more than 508 micrometers (microns) and an ash content of more than 3 percent; or

(c) Having a brightness of less than 60 percent, a caliper of 254 micrometers (microns) or less and an ash content of more than 8 percent.

Heading 4802 does not, however, cover filter paper or paperboard (including teabag paper) or felt paper or paperboard."

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(187). Note 8 (previously note 7) to chapter 48 is superseded by:

"8. Headings 4801 and 4803 to 4809 apply only to paper, paperboard, cellulose wadding and webs of cellulose fibers:

(a) In strips or rolls of a width exceeding 36 cm; or

(b) In rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state."

(188). Subheading note 3 to chapter 48 is superseded by:

"3. For the purposes of subheading 4805.11, "semichemical fluting paper" means paper, in rolls, of which not less than 6 percent by weight of the total fiber content consists of unbleached hardwood fibers obtained by a semichemical pulping process, and having a CMT 30 (Corrugated Medium Test with 30 minutes of conditioning) crush resistance exceeding 1.8 newtons/g/m^2 at 50 percent relative humidity, at 23°C."

(189)(a). Subheadings notes 4 and 5 to chapter 48 are redesignated as subheading notes 6 and 7, respectively.

(b). The following new subheading notes 4 and 5 to chapter 48 are inserted in numerical sequence:

"4. Subheading 4805.12 covers paper, in rolls, made mainly of straw pulp obtained by a semichemical pulping process, weighing 130 g/m^2 or more, and having a CMT 30 (Corrugated Medium Test with 30 minutes of conditioning) crush resistance exceeding 1.4 newtons/g/m^2 at 50 percent relative humidity, at 23°C.

5. Subheading 4805.24 and 4805.25 cover paper and paperboard made wholly or mainly of pulp recovered (waste and scrap) paper or paperboard. Testliner may also have a surface layer of dyed paper or of paper made of bleached or unbleached non-recovered pulp. These products have a Mullen burst index of not less than 2 kPa•m^2/g."

(190). Subheading note 7 (previously note 5) to chapter 48 is modified by deleting "4810.21" and inserting "4810.22" in lieu thereof.

(191). The article description of heading 4802 is modified to read:

"Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and non perforated punch-cards and punch tape paper, in rolls or rectangular (including square) sheets, of any size, other than paper of heading 4801 or 4803; hand-made paper and paperboard:"

(192). Subheadings 4802.20.00, 4802.30.20 and 4802.30.40 are superseded by:

	[Uncoated paper and paperboard, of a kind...]			
"4802.20	Paper and paperboard of a kind used as a base for photo-sensitive, heat-sensitive or electro-sensitive paper or paperboard:			
4802.20.10	In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state	Free		20%
	Other:			
4802.20.20	Basic paper to be sensitized for use in photography	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	5%
4802.20.40	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%

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	:[Uncoated paper and paperboard, of a kind...]	:	:	:
	: [Carbonizing base paper:]	:	:	:
	: In strips or rolls of a width exceeding 15 cm	:	:	:
	: or in rectangular (including square) sheets	:	:	:
	: with one side exceeding 36 cm and the other	:	:	:
	: side exceeding 15 cm in the unfolded state:	:	:	:
4802.30.50	: Weighing not over 15 g/m².....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 38%
	:	: to this	: MX)	:
	:	: proclamation]	:	:
4802.30.60	: Weighing over 15 g/m².....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 30.5%
	:	: to this	: MX)	:
	:	: proclamation]	:	:
4802.30.70	: Other.....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 30%*
	:	: to this	: MX)	:
	:	: proclamation]	:	:

(193)(a). The superior text immediately preceding subheading 4802.51 and subheadings 4802.51 through 4802.60.90 and any intervening text to such subheadings are superseded by:

	:[Uncoated paper and paperboard, of a kind...]	:	:	:
	: "Other paper and paperboard, not containing fibers	:	:	:
	: obtained by a mechanical or chemi-mechanical	:	:	:
	: process or of which not more than 10 percent by	:	:	:
	: weight of the total fiber content consists of such	:	:	:
	: fibers:	:	:	:
4802.54	: Weighing less than 40 g/m²:	:	:	:
	: In strips or rolls of a width exceeding	:	:	:
	: 15 cm or in rectangular (including	:	:	:
	: square) sheets with one side exceeding	:	:	:
	: 36 cm and the other side exceeding	:	:	:
	: 15 cm in the unfolded state:	:	:	:
4802.54.10	: Writing paper.....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 28%
	:	: to this	: MX)	:
	:	: proclamation]	:	:
4802.54.20	: India and bible paper.....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 18%
	:	: to this	: MX)	:
	:	: proclamation]	:	:
4802.54.30	: Other.....	: Free	:	: 11.5%
	: Other:	:	:	:
4802.54.40	: Printed, embossed or perforated.....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 30%
	:	: to this	: MX)	:
	:	: proclamation]	:	:
	: Other:	:	:	:
4802.54.50	: Basic paper to be sensitized	:	:	:
	: for use in photography.....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 5%
	:	: to this	: MX)	:
	:	: proclamation]	:	:
4802.54.60	: Other.....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 30%
	:	: to this	: MX)	:
	:	: proclamation]	:	:
4802.55	: Weighing 40 g/m² or more but not more than	:	:	:
	: 150 g/m², in rolls:	:	:	:
	: Of a width exceeding 15 cm:	:	:	:
4802.55.10	: Writing and cover paper.....	:[See Annex III(A)	: Free (A*,CA,E,IL,	: 28%
	:	: to this	: J,MX)	:
	:	: proclamation]	:	:
4802.55.20	: Drawing paper.....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 15.5%
	:	: to this	: MX)	:
	:	: proclamation]	:	:

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	[Uncoated paper and paperboard, of a kind...]			
	[Other paper and paperboard, not...]			
	[Weighing 40 g/m² or more but...]			
	[Of a width exceeding 15 cm:]			
4802.55.30	India and bible paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	18%
4802.55.40	Other	Free		11.5%
	Other:			
4802.55.50	Printed, embossed or perforated	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
	Other:			
4802.55.60	Basic paper to be sensitized for use in photography	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	5%
4802.55.70	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
4802.56	Weighing 40 g/m² or more but not more than 150 g/m², in sheets with one side not exceeding 435 mm and the other side not exceeding 297 mm in the unfolded state:			
	With one side exceeding 360 mm and the other side exceeding 150 mm in the unfolded state:			
4802.56.10	Writing and cover paper	[See Annex III(A) to this proclamation]	Free (A*,CA,E,IL, J,MX)	28%
4802.56.20	Drawing paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	15.5%
4802.56.30	India and bible paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	18%
4802.56.40	Other	Free		11.5%
	Other:			
4802.56.50	Printed, embossed or perforated	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
	Other:			
4802.56.60	Basic paper to be sensitized for use in photography	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	5%
4802.56.70	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
4802.57	Other, weighing 40 g/m² or more but not more than 150 g/m²:			
4802.57.10	Writing and cover paper	[See Annex III(A) to this proclamation]	Free (A*,CA,E,IL, J,MX)	28%
4802.57.20	Drawing paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	15.5%
4802.57.30	India and bible paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	18%
4802.57.40	Other	Free		11.5%

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	[Uncoated paper and paperboard, of a kind...]			
	[Other paper and paperboard, not...]			
4802.58	Weighing more than 150 g/m²:			
	In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state:			
4802.58.10	Writing and cover paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
4802.58.20	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	24.5%
	Other:			
4802.58.40	Printed, embossed or perforated	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
	Other:			
4802.58.50	Basic paper to be sensitized for use in photography	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	5%
4802.58.60	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
	Other paper and paperboard, of which more than 10 percent by weight of the total fiber content consists of fibers obtained by a mechanical or chemi-mechanical process:			
4802.61	In rolls:			
	Of a width exceeding 15 cm:			
4802.61.10	Writing paper and cover paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	28%
4802.61.20	Drawing paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	15.5%
4802.61.30	Other	Free		11.5%
	Other:			
4802.61.40	Printed, embossed or perforated	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
	Other:			
4802.61.50	Basic paper to be sensitized for use in photography	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	5%
4802.61.60	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
4802.62	In sheets with one side not exceeding 435 mm and the other side not exceeding 297 mm in the unfolded state:			
	With one side exceeding 360 mm and the other side exceeding 150 mm in the unfolded state:			
4802.62.10	Writing paper and cover paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	28%

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	[Uncoated paper and paperboard, of a kind...]			
	[Other paper and paperboard, of which...]			
	[In sheets with one side not...]			
	[With one side exceeding...]			
4802.62.20	Drawing paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	15.5%
4802.62.30	Other	Free		11.5%
	Other:			
4802.62.40	Printed, embossed or perforated	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
	Other:			
4802.62.50	Basic paper to be sensitized for use in photography	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	5%
4802.62.60	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
4802.69	Other:			
4802.69.10	Writing paper and cover paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	28%
4802.69.20	Drawing paper	[See Annex III(A) to this proclamatic..]	Free (A,CA,E,IL,J, MX)	15.5%
4802.69.30	Other	Free		11.5%"

(b). Conforming changes:

(A). General note 4(d) is modified by deleting "4802.52.10 Argentina" and inserting "4802.55.10 Argentina", "4802.56.10 Argentina" and "4802.57.10 Argentina" in lieu thereof.

(B). The superior text immediately preceding subheading 4823.51.00 and subheadings 4823.51.00, 4823.59, 4823.59.20 and 4823.59.40 are deleted.

(194)(a). The article description of heading 4805 is modified by deleting "note 2" and inserting "note 3" in lieu thereof:

(b). Subheadings 4805.10.00 through 4805.29.00 and any intervening text to such subheadings and subheadings 4805.60 through 4805.80.40 and any intervening text to such subheadings are superseded by:

	[Other uncoated paper and paperboard, in rolls...]			
	"Fluting paper:			
4805.11.00	Semichemical fluting paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
4805.12	Straw fluting paper:			
4805.12.10	Weighing 150 g/m² or less	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
4805.12.20	Weighing over 150 g/m²	Free		30%
4805.19	Other:			
4805.19.10	Weighing 150 g/m² or less	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
4805.19.20	Weighing over 150 g/m²	Free		30%

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	:[Other uncoated paper and paperboard, in rolls...]	:	:	:
	: Testliner (recycled liner board):	:	:	:
4805.24	: Weighing 150 g/m² or less:	:	:	:
4805.24.50	: Weighing not over 15 g/m2	:[See Annex III(A) to this proclamation]	: Free (A,CA,E,IL,J, MX)	: 30%
4805.24.70	: Weighing over 15 g/m² but not over 30 g/m²	: Free	:	: 11¢/kg + 15%
4805.24.90	: Weighing over 30 g/m²	:[See Annex III(A) to this proclamation]	: Free (A,CA,E,IL,J, MX)	: 30%
4805.25.00	: Weighing more than 150 g/m²	: Free	:	: 30%
	: Other:	:	:	:
4805.91	: Weighing 150 g/m² or less:	:	:	:
4805.91.10	: Multi-ply paper and paperboard; bibulous and wrapping paper	: Free	:	: 30%
4805.91.20	: Condenser paper	:[See Annex III(A) to this proclamation]	: Free (A,CA,E,IL,J, MX)	: 25%
	: Other:	:	:	:
4805.91.50	: Weighing not over 15 g/m2	:[See Annex III(A) to this proclamation]	: Free (A,CA,E,IL,J, MX)	: 30%
4805.91.70	: Weighing over 15 g/m² but not over 30 g/m²	: Free	:	: 11¢/kg + 15%
4805.91.90	: Weighing over 30 g/m²	:[See Annex III(A) to this proclamation]	: Free (A,CA,E,IL,J, MX)	: 30%
4805.92	: Weighing more than 150 g/m² but less than 225 g/m²:	:	:	:
4805.92.20	: Pressboard	:[See Annex III(A) to this proclamation]	: Free (A,CA,E,IL,J, MX)	: 30%
4805.92.40	: Other	: Free	:	: 30%
4805.93	: Weighing 225 g/m² or more:	:	:	:
4805.93.20	: Pressboard	:[See Annex III(A) to this proclamation]	: Free (A,CA,E,IL,J, MX)	: 30%
4805.93.40	: Other	: Free	:	: 30%"

(195). Heading 4807 and all subordinate subheadings and text thereto are superseded by:

"4807.00	: Composite paper and paperboard (made by sticking flat : layers of paper or paperboard together with an adhesive), not surface-coated or impregnated, whether or not : internally reinforced, in rolls or sheets:	:	:	:
4807.00.10	: Paper and paperboard, laminated internally with bitumen, tar or asphalt	: Free	:	: 30%
	: Other:	:	:	:
4807.00.91	: Straw paper and paperboard, whether or not covered with paper other than straw paper	:[See Annex III(A) to this proclamation]	: Free (A,CA,E,IL,J, MX)	: 30%

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	[Composite paper and paperboard (made...]			
	[Other:]			
	Other:			
4807.00.92	Cloth-lined or reinforced paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	22.5%
4807.00.94	Other	Free		30%"

(196)(a). Heading 4810 and all subordinate subheadings and text thereto are superseded by:

"4810	Paper and paperboard, coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size:			
	Paper and paperboard of a kind used for writing, printing or other graphic purposes, not containing fibers obtained by a mechanical or chemi-mechanical process or of which not more than 10 percent by weight of the total fiber content consists of such fibers:			
4810.13	In rolls:			
	Of a width exceeding 15 cm:			
	Weighing not more than 150 g/m²:			
4810.13.11	Basic paper to be sensitized for use in photography	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	5%
4810.13.13	India or bible paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	24%
4810.13.19	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	37%
4810.13.20	Weighing more than 150 g/m²	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	42%
	Other:			
4810.13.50	Printed, embossed or perforated	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
	Other:			
4810.13.60	Basic paper to be sensitized for use in photography	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	5%
4810.13.70	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
4810.14	In sheets with one side not exceeding 435 mm and the other side not exceeding 297 mm in the unfolded state:			
	With one side exceeding 360 mm and the other side exceeding 150 mm in the unfolded state:			
	Weighing not more than 150 g/m²:			
4810.14.11	Basic paper to be sensitized for use in photography	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	5%

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	[Paper and paperboard, coated on one or...]			
	[Paper and paperboard of a kind used...]			
	[In sheets with one side not...]			
	[With one side exceeding...]			
	[Weighing not more than 150 g/m²:]			
4810.14.13	India or bible paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	24%
4810.14.19	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	37%
4810.14.20	Weighing more than 150 g/m²	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	42%
	Other:			
4810.14.50	Printed, embossed or perforated	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
	Other:			
4810.14.60	Basic paper to be sensitized for use in photography	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	5%
4810.14.70	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
4810.19	Other:			
	Weighing not more than 150 g/m²:			
4810.19.11	Basic paper to be sensitized for use in photography	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	5%
4810.19.13	India or bible paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	24%
4810.19.19	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	37%
4810.19.20	Weighing more than 150 g/m²	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	42%
	Paper and paperboard of a kind used for writing, printing or other graphic purposes, of which more than 10 percent by weight of the total fiber content consists of fibers obtained by a mechanical or chemi-mechanical process:			
4810.22	Light-weight coated paper:			
4810.22.10	In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	37%
	Other:			
4810.22.50	Printed, embossed or perforated	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%

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	[Paper and paperboard, coated on one or...]			
	[Paper and paperboard of...]			
	[Light-weight coated paper:]			
	[Other:]			
	Other:			
4810.22.60	Basic paper to be sensitized for use in photography	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	5%
4810.22.70	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
4810.29	Other:			
4810.29.10	In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	37%
	Other:			
4810.29.50	Printed, embossed or perforated	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
	Other:			
4810.29.60	Basic paper to be sensitized for use in photography	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	5%
4810.29.70	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
	Kraft paper and paperboard, other than that of a kind used for writing, printing or other graphic purposes:			
4810.31	Bleached uniformly throughout the mass and of which more than 95 percent by weight of the total fiber content consists of wood fibers obtained by a chemical process and weighing 150 g/m^2 or less:			
4810.31.10	In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state	Free		25%
	Other:			
4810.31.30	Cards, not punched, for punchcard machines, whether or not in strips	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
4810.31.65	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	26.5%

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	:[Paper and paperboard, coated on one or...]	:	:	:
	: [Kraft paper and paperboard, other...]	:	:	:
4810.32	: Bleached uniformly throughout the mass and of	:	:	:
	: which more than 95 percent by weight of the	:	:	:
	: total fiber content consists of wood fibers	:	:	:
	: obtained by a chemical process and weighing	:	:	:
	: more than 150 g/m²:	:	:	:
4810.32.10	: In strips or rolls of a width exceeding	:	:	:
	: 15 cm or in rectangular (including	:	:	:
	: square) sheets with one side exceeding	:	:	:
	: 36 cm and the other side exceeding	:	:	:
	: 15 cm in the unfolded state.....	: Free	:	: 25%
	:	:	:	:
	: Other:	:	:	:
4810.32.30	: Cards, not punched, for punchcard	:	:	:
	: machines, whether or not in strips.....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 30%
	:	: to this	: MX)	:
	:	: proclamation]	:	:
4810.32.65	: Other.....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 26.5%
	:	: to this	: MX)	:
	:	: proclamation]	:	:
4810.39	: Other:	:	:	:
	: In strips or rolls of a width exceeding	:	:	:
	: 15 cm or in rectangular (including	:	:	:
	: square) sheets with one side exceeding	:	:	:
	: 36 cm and the other side exceeding	:	:	:
	: 15 cm in the unfolded state:	:	:	:
4810.39.12	: Whether or not impregnated, but	:	:	:
	: not otherwise treated.....	: Free	:	: 25%
	:	:	:	:
4810.39.14	: Other.....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 20%
	:	: to this	: MX)	:
	:	: proclamation]	:	:
	: Other:	:	:	:
4810.39.30	: Cards, not punched, for punchcard	:	:	:
	: machines, whether or not in strips.....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 30%
	:	: to this	: MX)	:
	:	: proclamation]	:	:
4810.39.65	: Other.....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 26.5%
	:	: to this	: MX)	:
	:	: proclamation]	:	:
	: Other paper and paperboard:	:	:	:
4810.92	: Multi-ply:	:	:	:
	: In strips or rolls of a width exceeding	:	:	:
	: 15 cm or in rectangular (including	:	:	:
	: square) sheets with one side exceeding	:	:	:
	: 36 cm and the other side exceeding	:	:	:
	: 15 cm in the unfolded state:	:	:	:
4810.92.12	: Weighing more than 150 g/m².....	: Free	:	: 30%
4810.92.14	: Other.....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 20%
	:	: to this	: MX)	:
	:	: proclamation]	:	:
	: Other:	:	:	:
4810.92.30	: Cards, not punched, for punchcard	:	:	:
	: machines, whether or not in strips.....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 30%
	:	: to this	: MX)	:
	:	: proclamation]	:	:
4810.92.65	: Other.....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	: 26.5%
	:	: to this	: MX)	:
	:	: proclamation]	:	:

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	[Paper and paperboard, coated on one or...]			
	[Other paper and paperboard:]			
4810.99	Other:			
4810.99.10	In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	20%
	Other:			
4810.99.30	Cards, not punched, for punchcard machines, whether or not in strips	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
4810.99.65	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	26.5%

(b). Conforming change: Subheadings 4823.90.30 and 4823.90.65 are renumbered as 4823.90.31 and 4823.90.66, respectively.

(197)(a). Heading 4811 and all subordinate subheadings and text thereto are superseded by:

"4811	Paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810:			
4811.10	Tarred, bituminized or asphalted paper and paperboard:			
4811.10.10	In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state	Free		10%
4811.10.20	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	26.5%
	Gummed or adhesive paper and paperboard:			
4811.41	Self-adhesive:			
4811.41.10	In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	40%
	Other:			
4811.41.20	In strips or rolls	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	40%
4811.41.30	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	35%

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	[Paper, paperboard, cellulose wadding and...]			
	[Gummed or adhesive paper and paperboard:]			
4811.49	Other:			
4811.49.10	In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state	Free		14%
	Other:			
4811.49.20	In strips or rolls	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
4811.49.30	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	35%
	Paper and paperboard, coated, impregnated or covered with plastics (excluding adhesives):			
4811.51	Bleached, weighing more than 150 g/m^2:			
	In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state:			
4811.51.20	0.3 mm or more in thickness	Free		30%
4811.51.40	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	42%
4811.51.60	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	35%
4811.59	Other:			
	In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state:			
4811.59.20	Printing paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	37%
4811.59.40	Other	Free		25%
4811.59.60	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	35%
4811.60	Paper and paperboard, coated, impregnated or covered with wax, paraffin, stearin, oil or glycerol:			
4811.60.40	In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	17.5%
4811.60.60	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	35%

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	[Paper, paperboard, cellulose wadding and...]			
4811.90	Other paper, paperboard, cellulose wadding and webs of cellulose fibers:			
	In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state:			
4811.90.10	Handmade paper	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	27%
	Other:			
4811.90.20	Wholly or partly covered with flock, gelatin, metal or metal solutions	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	22.5%
	Other:			
4811.90.30	Impregnated with latex	Free		25%
	Other:			
4811.90.40	Weighing not over 15 g/m^2	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	30%
	Weighing over 15 g/m^2:			
4811.90.60	but not over 30 g/m^2	Free		20%
4811.90.80	Weighing over 30 g/m^2	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	18.5%
4811.90.90	Other	[See Annex III(A) to this proclamation]	Free (A,CA,E,IL,J, MX)	35%"

(b). Conforming changes:

(A). The article description of subheading 4821.90.20 is modified to read "Self-adhesive".

(B). Subheadings 4823.11.00, 4823.19.00 and 4823.90.85 are renumbered as 4823.12.00, 4823.19.01 and 4823.90.86, respectively, and the article description of subheading 4823.12.00 is modified to read "Self-adhesive".

(C). The article description of heading 9907.48.01 is modified by deleting "4811.31.40" and inserting "4811.51.40" in lieu thereof.

(D). The article description of heading 9907.48.03 is modified by deleting "4823.90.30 or 4823.90.85" and inserting "4810.31.30, 4810.32.30, 4810.39.30, 4810.92.30, 4810.99.30, 4823.90.36 or 4823.90.86" in lieu thereof.

(198). Note 2 to chapter 49 is modified by deleting "of a computer" and inserting "of an automatic data processing machine" in lieu thereof.

(199). The article description of heading 4907.00.00 is modified by deleting "country to which they are destined;" and inserting "country in which they have, or will have, a recognized face value;" in lieu thereof.

(200). Subheading note 1 to section XI is modified by inserting immediately above subdivision (k) the following nonindented new text:

"The definition at (e) to (ij) above apply, *mutatis mutandis*, to knitted or crocheted fabrics."

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(201). Subdivision (A) of subheading note 2 to section XI is modified by deleting "chapters 50 to 55" and inserting "chapters 50 to 55 or of heading 5809" in lieu thereof.

(202). Subheadings 5102.10 through 5102.10.90 and any intervening text are superseded by:

	:[Fine or coarse animal hair, not carded or combed:]	:	:	:
	: "Fine animal hair:	:	:	:
5102.11	: Of Kashmir (cashmere) goats:	:	:	:
5102.11.10	: Not processed in any manner beyond the degreased or carbonized condition	: 5.1¢/clean kg	: Free (CA,E,IL,J, JO,MX)	: 46.3¢/clean kg
5102.11.90	: Other	: 4.9¢/kg + 4%	: Free (CA,IL,JO, MX)	: 81.6¢/kg + 20%
5102.19	: Other:	:	:	:
	: Not processed in any manner beyond the degreased or carbonized condition:	:	:	:
5102.19.20	: Hair of the camel	: 5¢/clean kg	: Free (CA,E,IL,J, JO,MX)	: 55¢/clean kg
5102.19.60	: Other	: 0.4%	: Free (A,CA,E,IL, J,JO,MX)	: 6.9%
	: Other:	:	:	:
5102.19.80	: Fur, prepared for hatters' use	: Free	:	: 35%
5102.19.90	: Other	: 4.9¢/kg + 4%	: Free (CA,IL,JO, MX)	: 81.6¢/kg + 20%"

(203). Subheading 5105.30.00 is superseded by:

	:[Wool and fine or coarse animal hair, carded or...]	:	:	:
	: "Fine animal hair, carded or combed:	:	:	:
5105.31.00	: Of Kashmir (cashmere) goats	:[See Annex III(A) to this proclamation]	: Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	: 81.6¢/kg + 20%
5105.39.00	: Other	:[See Annex III(A) to this proclamation]	: Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	: 81.6¢/kg + 20%"

(204). Subheadings 5305.91.00 and 5305.99.00 and the superior text to 5305.91.00 are superseded by:

	:[Coconut, abaca (Manila hemp or...]	:	:	:
"5305.90.00	: Other	: Free	:	: Free"

(205)(a). Subheading 5308.30.00 is deleted.
(b). Subheading 5308.90.00 is superseded by:

	:[Yarn of other vegetable textile fibers; paper yarn:]	:	:	:
"5308.90	: Other:	:	:	:
5308.90.10	: Paper yarn	:[See Annex III(A) to this proclamation]	: Free (A,CA,E,IL, J,JO,MX)	: 35%
5308.90.90	: Other	:[See Annex III(A) to this proclamation	: Free (CA,E",IL, MX)	: 40%"

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(206). The article description of subheading 5408.10.00 is modified by deleting "yam, of" and inserting "yam of" in lieu thereof.

(207)(a). Subheadings 5607.30, 5607.30.10 and 5607.30.20 are deleted.

(b). Subheading 5607.90.20 is renumbered as 5607.90.90.

(c). The following provisions are inserted in numerical sequence together with their immediately superior text:

	:[Twine, cordage, ropes and cables, whether or...]	:	:	:	
	: [Other:]	:	:	:	
	: "Of abaca (Manila hemp or Musa textilis Nee)	:	:	:	
	: or other hard (leaf) fibers:	:	:	:	
5607.90.25	: Of stranded construction measuring	:	:	:	
	: 1.88 cm or over in diameter.....	: Free	:	:	4¢/kg
	:	:	:	:	
5607.90.35	: Other.....	:[See Annex III(A)	: Free (A,CA,E,IL,J,	:	40%"
	:	: to this	: JO,MX)	:	
	:	: proclamation]	:	:	

(208). The article description of heading 5804 is modified by deleting "heading 6002" and inserting "headings 6002 to 6006" in lieu thereof.

(209). Note 1 to chapter 59 is modified by deleting "heading 6002" and inserting "headings 6002 to 6006" in lieu thereof.

(210). The article description of subheading 5903.10 is modified by deleting "polyvinyl chloride" and inserting "poly(vinyl chloride)" in lieu thereof.

(211)(a). Subheadings 5904.91.00 and 5904.92.00 and the superior text to 5904.91.00 are superseded by:

	:[Linoleum, whether or not cut to shape; floor...]	:	:	:	
"5904.90	: Other:	:	:	:	
5904.90.10	: With a base consisting of needleloom felt or	:	:	:	
	: nonwovens.....	:[See Annex III(A)	: Free (A,B,CA,E,IL,	:	40%
	:	: to this	: J,MX)	:	
	:	: proclamation	:	:	
5904.90.90	: Other.....	:[See Annex III(A)	: Free (A*,B,CA,E,	:	40%"
	:	: to this	: IL,J,MX)	:	
	:	: proclamation	:	:	

(b). Conforming change: General note 4(d) is modified by:

(A). deleting the following subheading and the countries set out opposite such subheading:

5904.92.00 Guatemala;
India

(B). adding, in numerical sequence, the following subheading and countries set out opposite such subheading:

5904.90.90 Guatemala;
India

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(212). Heading 6002 and all subordinate provisions and text thereto are superseded by:

"6002	: Knitted or crocheted fabrics of a width not exceeding 30 cm, containing by weight 5 percent or more of elastomeric yarn or rubber thread, other than those of heading 6001:	:	:	:
6002.40	: Containing by weight 5 percent or more of elastomeric yarn but not containing rubber thread:	:	:	:
6002.40.40	: Of cotton	: [See Annex III(A) to this proclamation]	: Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	: 35%
6002.40.80	: Other	: [See Annex III(A) to this proclamation]	: Free (CA,E*,IL, MX) [See Annex III(D)2 to this proclamation](JO)	: 90%
6002.90	: Other:	:	:	:
6002.90.40	: Of cotton	: [See Annex III(A) to this proclamation]	: Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	: 35%
6002.90.80	: Other	: [See Annex III(A) to this proclamation]	: Free (CA,E*,IL, MX) [See Annex III(D)2 to this proclamation](JO)	: 90%
6003	: Knitted or crocheted fabrics of a width not exceeding 30 cm, other than those of heading 6001 or 6002:	:	:	:
6003.10	: Of wool or fine animal hair:	:	:	:
6003.10.10	: Open-work fabrics, warp knit	: [See Annex III(A) to this proclamation]	: Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	: 90%
6003.10.90	: Other	: [See Annex III(A) to this proclamation	: Free (CA,E*,IL, MX) [See Annex III(D)2 to this proclamation](JO)	: 59%
6003.20	: Of cotton:	:	:	:
6003.20.10	: Open-work fabrics, warp knit	: [See Annex III(A) to this proclamation]	: Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	: 90%
6003.20.30	: Other	: [See Annex III(A) to this proclamation]	: Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	: 35%
6003.30	: Of synthetic fibers:	:	:	:
6003.30.10	: Open-work fabrics, warp knit	: [See Annex III(A) to this proclamation]	: Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	: 90%
6003.30.60	: Other	: [See Annex III(A) to this proclamation]	: Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	: 90%

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	[Knitted or crocheted fabrics of a width not exceeding...]			
6003.40	Of artificial fibers:			
6003.40.10	Open-work fabrics, warp knit	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	90%
6003.40.60	Other	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	90%
6003.90	Other:			
6003.90.10	Open-work fabrics, warp knit	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	90%
6003.90.90	Other	[See Annex III(A) to this proclamation	Free (CA,E*,IL, MX) [See Annex III(D)2 to this proclamation](JO)	59%
6004	Knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5 percent or more of elastomeric yarn or rubber thread, other than those of heading 6001:			
6004.10.00	Containing by weight 5 percent or more of elastomeric yarn but not containing rubber thread	[See Annex III(A) to this proclamation	Free (CA,E*,IL, MX) [See Annex III(D)2 to this proclamation](JO)	113.5%
6004.90	Other:			
6004.90.20	Containing elastomeric yarn and rubber thread	[See Annex III(A) to this proclamation	Free (CA,E*,IL, MX) [See Annex III(D)2 to this proclamation](JO)	113.5%
6004.90.90	Other	[See Annex III(A) to this proclamation	Free (CA,E*,IL, MX) [See Annex III(D)2 to this proclamation](JO)	60%
6005	Warp knit fabrics (including those made on galloon knitting machines), other than those of headings 6001 to 6004:			
6005.10.00	Of wool or fine animal hair	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	65.5%
	Of cotton:			
6005.21.00	Unbleached or bleached	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	45%
6005.22.00	Dyed	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	45%

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	[Warp knit fabrics (including those made...]			
	[Of cotton:]			
6005.23.00	Of yarns of different colors	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	45%
6005.24.00	Printed	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	45%
	Of synthetic fibers:			
6005.31.00	Unbleached or bleached	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	113.5%
6005.32.00	Dyed	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	113.5%
6005.33.00	Of yarns of different colors	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	113.5%
6005.34.00	Printed	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	113.5%
	Of artificial fibers:			
6005.41.00	Unbleached or bleached	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	113.5%
6005.42.00	Dyed	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	113.5%
6005.43.00	Of yarns of different colors	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	113.5%
6005.44.00	Printed	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	113.5%
6005.90.00	Other	[See Annex III(A) to this proclamation]	Free (CA,E*,IL, MX) [See Annex III(D)2 to this proclamation](JO)	45%
6006	Other knitted or crocheted fabrics:			
6006.10.00	Of wool or fine animal hair	[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	65.5%

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	:[Other knitted or crocheted fabrics:]			
	: Of cotton:			
6006.21	: Unbleached or bleached:			
6006.21.10	: Circular knit, wholly of cotton yarns exceeding 100 metric number per single yam	:[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	45%
6006.21.90	: Other	:[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	45%
6006.22	: Dyed:			
6006.22.10	: Circular knit, wholly of cotton yarns exceeding 100 metric number per single yam	:[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	45%
6006.22.90	: Other	:[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	45%
6006.23	: Of yarns of different colors:			
6006.23.10	: Circular knit, wholly of cotton yarns exceeding 100 metric number per single yam	:[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	45%
6006.23.90	: Other	:[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	45%
6006.24	: Printed:			
6006.24.10	: Circular knit, wholly of cotton yarns exceeding 100 metric number per single yam	:[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	45%
6006.24.90	: Other	:[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	45%
	: Of synthetic fibers:			
6006.31.00	: Unbleached or bleached	:[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	113.5%
6006.32.00	: Dyed	:[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	113.5%
6006.33.00	: Of yarns of different colors	:[See Annex III(A) to this proclamation]	Free (CA,IL,MX) [See Annex III(D)2 to this proclamation](JO)	113.5%

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	:[Other knitted or crocheted fabrics:]	:	:	:
	: [Of synthetic fibers:]	:	:	:
6006.34.00	: Printed	:[See Annex III(A) : to this : proclamation]	: Free (CA,IL,MX) : [See Annex III(D)2 : to this : proclamation](JO)	: 113.5%
	: Of artificial fibers:	:	:	:
6006.41.00	: Unbleached or bleached	:[See Annex III(A) : to this : proclamation]	: Free (CA,IL,MX) : [See Annex III(D)2 : to this : proclamation](JO)	: 113.5%
6006.42.00	: Dyed	:[See Annex III(A) : to this : proclamation]	: Free (CA,IL,MX) : [See Annex III(D)2 : to this : proclamation](JO)	: 113.5%
6006.43.00	: Of yarns of different colors	:[See Annex III(A) : to this : proclamation]	: Free (CA,IL,MX) : [See Annex III(D)2 : to this : proclamation](JO)	: 113.5%
6006.44.00	: Printed	:[See Annex III(A) : to this : proclamation]	: Free (CA,IL,MX) : [See Annex III(D)2 : to this : proclamation](JO)	: 113.5%
6006.90	: Other:	:	:	:
6006.90.10	: Containing 85 percent or more by weight of silk or silk waste	:[See Annex III(A) : to this : proclamation]	: Free (CA,E,IL,J, : MX) : [See Annex III(D)2 : to this : proclamation](JO)	: 45%
6006.90.90	: Other	:[See Annex III(A) : to this : proclamation]	: Free (CA,E*,IL, : MX)	: 45%*

(213)(a). Subheadings 6110.10, 6110.10.10 and 6110.10.20 are superseded by:

	:[Sweaters, pullovers, sweatshirts, waistcoats...]	:	:	:
	: "Of wool or fine animal hair:	:	:	:
6110.11.00	: Of wool	:[See Annex III(A) : to this : proclamation]	: Free (CA,IL) : [See Annex III(B) : to this : proclamation](MX) : [See Annex III(D)2 : to this : proclamation](JO)	: 54.5%
6110.12	: Of Kashmir (cashmere) goats:	:	:	:
6110.12.10	: Wholly of cashmere	:[See Annex III(A) : to this : proclamation]	: Free (CA,IL) : [See Annex III(B) : to this : proclamation](MX) : [See Annex III(D)2 : to this : proclamation](JO)	: 52%
6110.12.20	: Other	:[See Annex III(A) : to this : proclamation]	: Free (CA,IL) : [See Annex III(B) : to this : proclamation](MX) : [See Annex III(D)2 : to this : proclamation](JO)	: 54.5%

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	[Sweaters, pullovers, sweatshirts, waistcoats...]			
	[Of wool or fine animal hair:]			
6110.19.00	Other	[See Annex III(A) to this proclamation]	Free (CA,IL) [See Annex III(B) to this proclamation](MX) [See Annex III(D)2 to this proclamation](JO)	54.5%"

(b). Conforming changes:

(A). The article description of subheading 9817.61.01 is modified by deleting "6110.10.20," and inserting "6110.11, 6110.12.20, 6110.19," in lieu thereof.

(B). The article description of subheading 9819.11.15 is modified by deleting "6110.10" and inserting "6110.12" in lieu thereof.

(214). Note 3(b) to chapter 64 is modified by deleting "headings 4104 to 4109" and inserting "headings 4107 and 4112 to 4114" in lieu thereof.

(215). Note 1(b) to chapter 68 is superseded by:

"(b) Coated, impregnated or covered paper and paperboard of heading 4810 or 4811 (for example, paper and paperboard coated with mica powder or graphite, bituminized or asphalted paper and paperboard);"

(216)(a). Subheadings 6812.10.00, 6812.20.00, 6812.30.00 and 6812.40.00 are deleted.

(b). Subheading 6812.90.00 is renumbered as 6812.90.01.

(217). The superior text to 7010.91 and subheadings 7010.91 through 7010.94.50 and any intervening text to such subheadings are superseded by:

	[Carboys, bottles, flasks, jars, pots,...]			
"7010.90	Other:			
7010.90.05	Serum bottles, vials and other pharmaceutical containers	Free		50¢/gross
	Containers (with or without their closures) of a kind used for the conveyance or packing of perfume or other toilet preparations; other containers if fitted with or designed for use with ground glass stoppers:			
7010.90.20	Produced by automatic machine	2.5%	Free (A,CA,E,IL,J, JO,MX)	25%
7010.90.30	Other	5.2%	Free (A,CA,E,IL,J, MX) [See Annex III(D)2 to this proclamation](JO)	75%
7010.90.50	Other containers (with or without their closures)	Free		4.9%"

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(218). Additional U.S. note 1(c) to chapter 71 is superseded by:

"(c) The term "waste and scrap" refers to materials and articles which are second-hand or waste or refuse, or are obsolete, defective or damaged, and which are fit only for the recovery of the metal content or for use in the manufacture of chemicals. It includes residues and ashes of a kind used principally for the recovery of precious metals, but does not include metals in unwrought form or metal-bearing materials provided for in heading 2616."

(219). Subheadings 7112.10.00, 7112.20.00 and 7112.90.00 are superseded by:

	:[Waste and scrap of precious metal or of...]	:	:	:
"7112.30.00	: Ash containing precious metal or precious metal compounds	: Free	:	: Free
	: Other:	:	:	:
7112.91.00	: Of gold, including metal clad with gold but excluding sweepings containing other precious metals	: Free	:	: Free
7112.92.00	: Of platinum, including metal clad with platinum but excluding sweepings containing other precious metals	: Free	:	: Free
7112.99.00	: Other	: Free	:	: Free"

(220)(a). Subheading 7302.20.00 is deleted.

(b). Subheading 7302.90.00 is superseded by:

	:[Railway or tramway track construction...]	:	:	:
"7302.90	: Other:	:	:	:
7302.90.10	: Sleepers (cross-ties)	:[See Annex III(A) : to this : proclamation]	: Free (A+,CA,D,E, IL,J,MX)	: 2%
7302.90.90	: Other	:[See Annex III(A) : to this : proclamation]	: Free (A,CA,E,IL,J, MX)	: 45%"

(221). Subheadings 7415.31.00 through 7415.32.90 and any intervening text to such subheadings are superseded by:

	:[Nails, tacks, drawing pins, staples (other...]	:	:	:
	: [Other threaded articles:]	:	:	:
"7415.33	: Screws; bolts and nuts:	:	:	:
7415.33.05	: Screws for wood	: 3%	: Free (A,B,CA,E,IL, J,JO,MX)	: 45%
7415.33.10	: Muntz or yellow metal bolts	: 1.4%	: Free (A,B,CA,E,IL, J,JO,MX)	: 7%
7415.33.80	: Other screws and bolts; nuts	: 3%	: Free (A,B,CA,E,IL, J,JO,MX)	: 45%"

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(222). Subheadings 8101.91 through 8101.93.00 are superseded by:

	:[Tungsten (wolfram) and articles...]			
	: [Other:]			
"8101.94.00	: Unwrought tungsten, including bars and rods obtained simply by sintering	: 6.6%	: Free (A+,CA,D,E, IL,J,MX) [See Annex III(D)2 to this proclamation](JO)	: 60%
8101.95.00	: Bars and rods, other than those obtained simply by sintering, profiles, plates, sheets, strip and foil	: 6.5%	: Free (A+,CA,D,E, IL,J,MX) [See Annex III(D)2 to this proclamation](JO)	: 60%
8101.96.00	: Wire	: 4.4%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 60%
8101.97.00	: Waste and scrap	: 2.8%	: Free (A,CA,E,IL,J, JO,MX)	: 50%"

(223). Subheadings 8102.91 through 8102.93.00 are superseded by:

	:[Molybdenum and articles thereof,...]			
	: [Other:]			
"8102.94.00	: Unwrought molybdenum, including bars and rods obtained simply by sintering	: 13.9¢/kg on molybdenum content + 1.9%	: Free (A+,CA,D,E, IL,J,JO,MX)	: $1.10/kg on molybdenum content + 15%
8102.95	: Bars and rods, other than those obtained simply by sintering, profiles, plates, sheets, strip and foil:			
8102.95.30	: Bars and rods	: 6.6%	: Free (A,CA,E,IL,J, MX) [See Annex III(D)2 to this proclamation](JO)	: 60%
8102.95.60	: Other	: 6.6%	: Free (A,CA,E,IL,J, MX) [See Annex III(D)2 to this proclamation](JO)	: 60%
8102.96.00	: Wire	: 4.4%	: Free (A,CA,E,IL,J, JO,MX)	: 60%
8102.97.00	: Waste and scrap	: Free	:	: Free"

(224). Subheadings 8103.10, 8103.10.30 and 8103.10.60 are superseded by:

	:[Tantalum and articles thereof,...]			
"8103.20.00	: Unwrought tantalum, including bars and rods obtained simply by sintering; powders	: 2.5%	: Free (A,CA,E,IL,J, JO,MX)	: 25%
8103.30.00	: Waste and scrap	: Free	:	: Free"

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(225)(a). Subheadings 8105.10 through 8105.10.90 and any intervening text to such subnheadings are superseded by:

	[Cobalt mattes and other intermediate...]			
"8105.20	Cobalt mattes and other intermediate products of cobalt metallurgy; unwrought cobalt; powders:			
	Unwrought cobalt:			
8105.20.30	Alloys	4.4%	Free (A+,CA,D,E, IL,J,JO,MX)	45%
8105.20.60	Other	Free		Free
8105.20.90	Other	Free		Free
8105.30.00	Waste and scrap	Free		Free"

(b). Conforming change: The article description of heading 9902.80.05 is modified by deleting "8105.10.30" and inserting "8105.20.30" in lieu thereof.

(226). Subheading 8107.10.00 is superseded by:

	[Cadmium and articles thereof, including...]			
"8107.20.00	Unwrought cadmium; powders	Free		33¢/kg
8107.30.00	Waste and scrap	Free		33¢/kg"

(227). Subheadings 8108.10, 8108.10.10 and 8108.10.50 are superseded by:

	[Titanium and articles thereof, including...]			
"8108.20.00	Unwrought titanium; powders	15%	Free (A+,CA,D,E, IL,J,MX) [See Annex III(D)2 to this proclamation](JO)	25%
8108.30.00	Waste and scrap	Free		Free"

(228). Subheadings 8109.10, 8109.10.30 and 8109.10.60 are superseded by:

	[Zirconium and articles thereof, including...]			
"8109.20.00	Unwrought zirconium; powders	4.2%	Free (A+,CA,D,E, IL,J,JO,MX)	25%
8109.30.00	Waste and scrap	Free		Free"

(229). Heading 8110.00.00 is superseded by:

"8110	Antimony and articles thereof, including waste and scrap:			
8110.10.00	Unwrought antimony; powders	Free		4.4¢/kg
8110.20.00	Waste and scrap	Free		4.4¢/kg
8110.90.00	Other	Free		4.4¢/kg"

(230). Subheadings 8112.11, 8112.11.30 and 8112.11.60 are superseded by:

	[Beryllium, chromium, germanium,...]			
	[Beryllium:]			
"8112.12.00	Unwrought; powders	8.5%	Free (A,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	25%
8112.13.00	Waste and scrap	Free		Free"

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(231). Subheadings 8112.20, 8112.20.30 and 8112.20.60 are superseded by:

	:[Beryllium, chromium, germanium,...]	:	:	:
	: "Chromium:	:	:	:
8112.21.00	: Unwrought; powders	: 3%	: Free (A,CA,E,IL,J, JO,MX)	: 30%
8112.22.00	: Waste and scrap	: Free	:	: Free
8112.29.00	: Other	: 3%	: Free (A,CA,E,IL,J, JO,MX)	: 30%"

(232)(a). Subheadings 8112.91 through 8112.99.00 and any intervening text to such subheadings are superseded and the following provisions are inserted in numerical sequence:

	:[Beryllium, chromium, germanium, vanadium,...]	:	:	:
	: "Thallium:	:	:	:
8112.51.00	: Unwrought; powders	: 4%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 25%
8112.52.00	: Waste and scrap	: Free	:	: Free
8112.59.00	: Other	: 4%	: Free (A,CA,E,IL,J, JO,MX)	: 45%
	: [Other:]	:	:	:
8112.92	: Unwrought; waste and scrap; powders:	:	:	:
8112.92.05	: Waste and scrap	: Free	:	: Free
	: Other:	:	:	:
8112.92.10	: Gallium	: 3%	: Free (A,CA,E,IL,J, JO,MX)	: 25%
8112.92.20	: Hafnium	: Free	:	: 25%
8112.92.30	: Indium	: Free	:	: 25%
8112.92.40	: Niobium (columbium)	: 4.9%	: Free (A+,CA,D,E, IL,J,JO,MX)	: 25%
8112.92.50	: Rhenium	: 3%	: Free (A,CA,E,IL,J, JO,MX)	: 25%
8112.99.01	: Other	: 4%	: Free (A,CA,E,IL,J, JO,MX)	: 45%"

(b). Conforming change: U.S. note 6(a)(xii) to subchapter X of chapter 98 is modified by inserting "8112.59," immediately following "8112.19, ".

(233)(a). Note 1(e) to section XVI is modified by deleting "Transmission or conveyor belts of textile material" and inserting "Transmission or conveyor belts or belting of textile material" in lieu thereof.

(b). Note 1(o) to section XVI is modified by deleting the word "or" at the end of that note.

(c). Note 1(p) to section XVI is modified by deleting the period at the and of that note and inserting "; or" in lieu thereof.

(d). The following note 1(q) to section XVI is inserted in alphabetical sequence:

"(q) Typewriter or similar ribbons, whether or not on spools or in cartridges (classified according to their constituent material, or in heading 9612 if inked or otherwise prepared for giving impressions)."

(234). Note 2(a) to section XVI is modified by deleting "chapters 84 and 85" and inserting "chapter 84 or 85" in lieu thereof.

(235). Note 3 to section XVI is modified by deleting "other machines adapted for the purpose" and inserting "other machines designed for the purpose" in lieu thereof.

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(236). Note 1(e) to chapter 84 is superseded by:

"(e) Electromechanical domestic appliances of heading 8509; digital cameras of heading 8525; or"

(237)(a). Subheading 8415.10.00 is superseded by:

	[Air conditioning machines, comprising a...]			
"8415.10	Window or wall types, self-contained or "split-system":			
8415.10.30	Self-contained	Free		35%
	Other:			
8415.10.60	Incorporating a refrigerating unit and a valve for reversal of the cooling/heat cycle (reversible heat pumps)	1%	Free (A,B,C,CA,E, IL,J,JO,MX)	35%
8415.10.90	Other	2.2%	Free (A,B,C,CA,E, IL,J,JO,MX)	35%"

(b). Subheadings 8415.81.00 and 8415.82.00 are renumbered as 8415.81.01 and 8415.82.01, respectively, and the article description of subheading 8415.81.01 is modified by inserting the expression "(reversible heat pumps)" at the end of such description.

(238). The article description of heading 8419 is modified by deleting "whether or not electrically heated," and inserting "whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514)," in lieu thereof.

(239). Subheading 8419.90.80 is superseded by:

	[Machinery, plant or laboratory equipment,...]			
	[Parts:]			
	[Other:]			
"8419.90.85	Of electromechanical tools for working in the hand with self-contained electric motor	Free		35%
8419.90.95	Other	4%	Free (A,CA,E,IL, J,JO,MX)	35%"

(240)(a). Subheading 8430.62.00 is deleted.
(b). Subheading 8430.69.00 is renumbered as 8430.69.01.

(241). The article description of heading 8443 is modified to read:

"Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof;"

(242)(a). Subheadings 8461.10, 8461.10.40 and 8461.10.80 are deleted.
(b). Subheadings 8461.90.40 and 8461.90.80 are renumbered as 8461.90.30 and 8461.90.60, respectively.

(243). The article description of heading 8467 is modified by deleting "self-contained nonelectric motor" and inserting "self-contained electric or nonelectric motor" in lieu thereof.

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(244)(a). The following new provisions are inserted in numerical sequence:

	:[Tools for working in the hand, pneumatic,...]	:	:	:
	: "With self-contained electric motor:	:	:	:
8467.21.00	: Drills of all kinds	: 1.7%	: Free (A,CA,E,IL,J, JO,MX)	: 35%
8467.22.00	: Saws	: Free	:	: 35%
8467.29.00	: Other	: Free	:	: 35%"

(b). Heading 8508 and subheadings 8508.10.00, 8508.20.00, 8508.80.00, 8508.90, 8508.90.40 and 8508.90.80 are deleted.

(c). The subheadings listed in the in the first column of the following table are renumbered as the respective subheadings in the second column of the table:

Column 1	Column 2	Column 1	Column 2
8414.80.15	8414.80.16	8422.40.90	8422.40.91
8414.90.40	8414.90.41	8422.90.10	8422.90.11
8419.39.00	8419.39.01	8422.90.20	8422.90.21
8422.30.10	8422.30.11	8422.90.90	8422.90.91
8422.30.90	8422.30.91	8467.91.00	8467.91.01
8422.40.10	8422.40.11	8467.99.00	8467.99.01

(d). Conforming changes:

(A). The article description of subheading 9903.41.30 is modified by deleting "8508.80" and inserting "8467.29" in lieu thereof.

(B). The article description of subheading 9903.41.35 is modified by deleting "8508.10 or 8508.80" and inserting "8467.21 or 8467.29" in lieu thereof.

(245). The article description of subheading 8471.50.00 is modified by deleting "subheading 8471.41 and 8471.49" and inserting "subheading 8471.41 or 8471.49" in lieu thereof.

(246)(a). Subheading 8472.90.95 is superseded by:

	:[Other office machines (for example,...]	:	:	:
	: [Other:]	:	:	:
"8472.90.80	: Printing machines other than those of	:	:	:
	: heading 8443 or 8471	: Free	:	: 25%
	:	:	:	:
8472.90.90	: Other	: 1.8%	: Free (A,CA,E,IL,J, JO,MX)	: 35%"
	:	:	:	:

(b). Conforming change: Subheading 8443.59.50 is renumbered as 8443.59.90.

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(247)(a). Subheading 8473.40.95 is superseded by:

	:[Parts and accessories (other than covers,...]	:	:	:
	: [Parts and accessories of the machines...]	:	:	:
"8473.40.80	: Parts and accessories of the goods of	:	:	:
	: subheading 8472.90.80.....	: Free	:	: 25%
	:	:	:	:
8473.40.85	: Other.....	: 1.9%	: Free (A,CA,E,IL,J,	: 35%"
	:	:	: JO,MX)	:

(b). Conforming change: Subheading 8443.90.50 is renumbered as 8443.90.90.

(248)(a). Subheading 8479.89.97 is superseded by:

	:[Machines and mechanical appliances having...]	:	:	:
	: [Other machines and mechanical...]	:	:	:
	: [Other:]	:	:	:
	: [Other:]	:	:	:
"8479.89.96	: Printing machines other than those	:	:	:
	: of heading 8443, 8471 or 8472.....	: Free	:	: 25%
	:	:	:	:
8479.89.98	: Other.....	: 2.5%	: Free (A,B,C,CA,	: 35%"
	:	:	: E,IL,J,JO,	:
	:	:	: MX)	:

(b). Conforming changes:

(A). Additional U.S. note 1 to chapter 84 is modified by deleting "8479.89.97" and inserting "8479.89.98" in lieu thereof.

(B). The article description of headings 9817.84.01, 9902.84.00, 9902.84.16 and 9902.84.30 is modified by deleting "8479.89.97" and inserting "8479.89.98" in lieu thereof.

(249). The article description of subheading 8481.30 is modified to read:

"Check (nonreturn) valves:"

(250). The article description of subheading 8483.90 is modified to read:

"Toothed wheels, chain sprockets and other transmission elements presented separately; parts:"

(251). Note 3 to chapter 85 is modified by deleting "Vacuum cleaners," and inserting "Vacuum cleaners, including dry and wet vacuum cleaners," in lieu thereof.

(252). The second paragraph of note 3 to chapter 85 is modified by deleting "electric scissors (heading 8508)" and inserting "electric scissors (heading 8467)" in lieu thereof.

(253). Note 6 to chapter 85 is superseded by:

"6. Records, tapes and other media of heading 8523 or 8524 remain classified in those headings when entered with the apparatus for which they are intended.

This note does not apply to such media when they are entered with articles other than the apparatus for which they are intended.

For the purposes of this note, the term "apparatus for which they are intended" refers to apparatus which reads or plays the media or which records or writes on the media."

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(254). The following subheading note to chapter 85 is inserted in numerical sequence:

"2. For the purposes of subheading 8542.10, the term "smart cards" means cards which have embedded in them an electronic integrated circuit (microprocessor) of any type in the form of a chip and which may or may not have a magnetic stripe."

(255). Additional U.S. note 12 to chapter 85 is modified by inserting the expression "articles of subheading 8543.89.10;" immediately before the expression "articles of subheading 8543.89.92".

(256). The following additional U.S. note to chapter 85 is inserted in numerical sequence:

"13. For the purposes of subheading 8527.90.86, the term "paging receivers" includes paging alert devices designed merely to emit a sound or visual signal (e.g., flashing light) upon the reception of a pre-set radio signal."

(257). The article description of subheading 8506.80.00 is modified to read:

"Other primary cells and primary batteries"

(258). The article description of subheading 8509.10.00 is modified to read:

"Vacuum cleaners, including dry and wet vacuum cleaners"

(259). The article description of heading 8514 is modified to read:

"Industrial or laboratory electric furnaces and ovens (including those functioning by induction or dielectric loss); other industrial or laboratory equipment for the heat treatment of materials by induction or dielectric loss; parts thereof:"

(260). Subheadings 8514.20.00 and 8514.90.00 are superseded and the following provisions inserted in numerical sequence:

	[Industrial or laboratory electric furnaces and...]			
"8514.20	Furnaces and ovens functioning by induction or dielectric loss:			
	Microwave ovens:			
8514.20.40	For making hot drinks, or for cooking or heating food	4%	Free (A,C,CA,E,IL, J,JO,MX)	35%
8514.20.60	Other	4.2%	Free (A,CA,E,IL, J,JO,MX)	35%
8514.20.80	Other	Free		35%
8514.90	Parts:			
8514.90.40	Of microwave ovens	4%	Free (A,CA,E,IL, J,JO,MX)	35%
8514.90.80	Other	Free		35%"

(b). Conforming changes:

(A). Subheading 8419.81.10 is deleted.

(B). The article description of subheading 8419.81.50 is modified by deleting "Other cooking stoves" and inserting "Cooking stoves" in lieu thereof.

(C). Subheading 8419.89.90 is renumbered as 8419.89.95.

(D). U.S. note 2(t) to subchapter XVII of chapter 98 is modified by deleting "8419.81.10".

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(261). The article description of subheading 8514.40.00 is modified to read:

"Other equipment for the heat treatment of materials by induction or dielectric loss"

(262). The article description of heading 8518 is modified by deleting "headphones, earphones and combined microphone/speaker sets" and inserting "headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers" in lieu thereof.

(263). The article description of subheading 8518.30 is modified to read:

"Headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers:"

(264). The article description of heading 8525 is modified by deleting "other video camera recorders:" and inserting "other video camera recorders; digital cameras:" in lieu thereof.

(265). The article description of subheading 8525.40 is modified by deleting "other video camera recorders:" and inserting "other video camera recorders; digital cameras:" in lieu thereof.

(266)(a). Subheadings 8531.80 through 8531.80.90 and any intervening text to such subheadings are superseded by:

	:[Electric sound or visual signaling apparatus...]	:	:	:
"8531.80.00	: Other apparatus	: 1.3%	: Free (A,B,C,CA,E, IL,J,JO,MX)	: 35%"

(b). Subheading 8527.90.85, 8529.90.23, 8529.90.76 and 8529.90.85 are renumbered as 8527.90.86, 8529.90.22, 8529.90.75 and 8529.90.86, respectively.

(c). Subheading 8531.90.10 is renumbered as 8531.90.15 and the article description is modified to read "Of the panels of subheading 8531.20".

(d). Subheading 8531.90.70 is renumbered as 8531.90.75 and the article description is modified to read "Of the panels of subheading 8531.20".

(267)(a). The superior text immediately preceding subheading 8542.12.00 and subheadings 8542.12.00 through 8542.30.00 and any intervening text to such subheadings are superseded by:

	:[Electronic integrated circuits and microassemblies;...]	:	:	:
"8542.10.00	: Cards incorporating an electronic integrated circuit	:	:	:
	: ("smart" cards)	: Free	:	: 35%
	:	:	:	:
	: Monolithic integrated circuits:	:	:	:
8542.21	: Digital:	:	:	:
8542.21.40	: For high definition television, having	:	:	:
	: greater than 100,000 gates	: Free	:	: 35%
	:	:	:	:
8542.21.80	: Other	: Free	:	: 35%
8542.29.00	: Other	: Free	:	: 35%"

(b). Subheadings 8542.40.00 and 8542.50.00 are renumbered as 8542.60.00 and 8542.70.00, respectively.

(268)(a). The following provisions are inserted in numerical sequence:

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	:[Electrical machines and apparatus, having...]	:	:	:
	: [Other machines and apparatus:]	:	:	:
	: [Other:]	:	:	:
	: "Physical vapor deposition apparatus:	:	:	:
8543.89.10	: Machines for processing of	:	:	:
	: semiconductor materials;	:	:	:
	: machines for production of	:	:	:
	: diodes, transistors and similar	:	:	:
	: semiconductor devices and	:	:	:
	: electronic integrated circuits	: Free	:	: 35%
	:	:	:	:
8543.89.20	: Other	: 2.5%	: Free (A,CA,E,IL,J, JO,MX)	: 35%
	: [Parts:]	:	:	:
8543.90.10	: Of physical vapor deposition apparatus	: Free	:	: 35%"

(b). Subheadings 8479.89.85 and 8479.90.95 are renumbered as 8479.89.84 and 8479.90.94, respectively.

(269). The article description of heading 8713 is modified to read:

"Carriages for disabled persons, whether or not motorized or otherwise mechanically propelled:"

(270). The article description of subheading 8714.20.00 is modified to read:

"Of carriages for disabled persons"

(271). Subheading 8805.20.00 is superseded by:

	:[Aircraft launching gear; deck-arrestor or...]	:	:	:
	: "Ground flying trainers and parts thereof:	:	:	:
8805.21.00	: Air combat simulators and parts thereof	: Free	:	: 35%
8805.29.00	: Other	: Free	:	: 35%"

(272). Heading 8906.00 and subheadings 8906.00.10 and 8906.00.90 are superseded by:

"8906	:Other vessels, including warships and lifeboats other	:	:	:
	:than row boats:	:	:	:
8906.10.00	: Warships	: Free	:	: Free
8906.90.00	: Other	: Free	:	: Free"

(273). Note 1(h) to chapter 90 is modified by deleting "still image video cameras and other video camera recorders (heading 8525); radar apparatus, radio navigational aid apparatus and radio remote control apparatus (heading 8526);" and inserting "still image video cameras, other video camera recorders and digital cameras (heading 8525); radar apparatus, radio navigational aid apparatus and radio remote control apparatus (heading 8526); numerical control apparatus (heading 8537);" in lieu thereof.

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(274). Note 6 to chapter 90 is redesignated as note 7 and modified as follows:

(a). inserting the expression ", which are designed to bring this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value" immediately following the expression "factor to be automatically controlled" in paragraph (a) of such note 7.

(b). inserting the expression ", which are designed to bring this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value" immediately following the expression "factor to be controlled" in paragraph (b) of such note 7.

(275). The following new note 6 to chapter 90 is inserted in numerical sequence:

"6. For the purposes of heading 9021, the expression "orthopedic appliances" means appliances for:

(a) Preventing or correcting bodily deformities; or

(b) Supporting or holding parts of the body following an illness, operation or injury.

Orthopedic appliances include footwear and special insoles designed to correct orthopedic conditions, provided that they are either (1) made to measure or (2) mass-produced, entered singly and not in pairs and designed to fit either foot equally."

(276). Additional U.S. note 5 to chapter 90 is modified by deleting "Subheadings 9009.90.10 and 9009.90.30 cover" and inserting "Subheading 9009.99.40 covers" in lieu thereof.

(277)(a). Subheadings 9009.90 through 9009.90.70 and any intervening text to such subheadings are superseded by:

	:[Photocopying apparatus incorporating an...]	:	:	:	
	: "Parts and accessories:	:	:	:	
9009.91.00	: Automatic document feeders	: Free	:	:	35%
9009.92.00	: Paper feeders	: Free	:	:	35%
9009.93.00	: Sorters	: Free	:	:	35%
9009.99	: Other:	:	:	:	
9009.99.40	: Parts of photocopying apparatus of	:	:	:	
	: subheading 9009.12 specified in	:	:	:	
	: additional U.S. note 5 to this chapter	: Free	:	:	35%
	:	:	:	:	
9009.99.80	: Other	: Free	:	:	35%"

(b). Conforming change: U.S. note 6(a)(xvii) to subchapter X of chapter 98 is modified by deleting "9009.90" and inserting "9009.99" in lieu thereof.

(278). The article description of subheading of subheading 9015.20 is modified by inserting "(tacheometers)" at the end thereof.

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(279). The superior text immediately preceding subheading 9021.11.00 and subheadings 9021.11.00 through 9021.19.85 and 9021.30.00 are superseded and the following provisions inserted in numerical sequence:

	[Orthopedic appliances, including crutches,...]			
"9021.10.00	Orthopedic or fracture appliances, and parts and accessories thereof	Free		55%
	Other artificial parts of the body and parts and accessories thereof:			
9021.31.00	Artificial joints and parts and accessories thereof	Free		55%
9021.39.00	Other	Free		40%"

(280). The superior text immediately preceding subheading 9108.91 and subheadings 9108.91 through 9108.99.80 and any intervening text to such subheadings are superseded by:

	[Watch movements, complete and assembled:]			
"9108.90	Other:			
	Having no jewels or only one jewel:			
9108.90.10	Measuring 33.8 mm or less	29¢ each	Free (CA,D,E,IL,J, JO,MX,R)	$1.50 each
9108.90.20	Other	25¢ each	Free (CA,D,E,IL,J, JO,MX,R)	$1.50 each
	Having over one jewel but not over 7 jewels:			
9108.90.30	Measuring 33.8 mm or less	57¢ each	Free (CA,D,E,IL,J, JO,MX,R)	$2.50 each
9108.90.40	Other	25¢ each	Free (CA,D,E,IL,J, JO,MX,R)	$1.50 each
	Having over 7 jewels but not over 17 jewels:			
	Measuring 33.8 mm or less.			
	Valued not over $15 each:			
9108.90.50	Measuring not over 15.2 mm	$2.16 each	Free (CA,D,E,IL,J, MX,R) [See Annex III(D)2 to this proclamation](JO)	$4 each
9108.90.60	Measuring over 15.2 mm	$1.80 each	Free (CA,D,E,IL,J, MX,R) [See Annex III(D)2 to this proclamation](JO)	$4 each
9108.90.70	Valued over $15 each	90¢ each	Free (CA,D,E,IL,J, JO,MX,R)	$4 each
	Other:			
9108.90.80	Valued not over $15 each	$1.44 each	Free (CA,D,E,IL,J, MX,R) [See Annex III(D)2 to this proclamation](JO)	$4 each
9108.90.85	Valued over $15 each	Free		$4 each
	Having over 17 jewels:			
9108.90.90	Measuring 33.8 mm or less	$1.50 each	Free (CA,D,E,IL,J, MX,R) [See Annex III(D)2 to this proclamation](JO)	$10.75 each
9108.90.95	Other	$1.72 each	Free (CA,D,E,IL,J, JO,MX,R)	$10.75 each"

(281). Subheading 9112.10.00 and 9112.80.00 are superseded by:

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	:[Clock cases and cases of a similar type...]	:	:	:
"9112.20	: Cases:	:	:	:
9112.20.40	: Cases of metal	: 3.5%	: Free (A+,B,CA,D, E,IL,J,JO, MX)	: 45%
9112.20.80	: Other cases	: 5.5%	: Free (A,B,CA,E, IL,J,MX) : [See Annex III(D)2 to this proclamation](JO)	: 45%"

(282). Heading 9301.00 and subheadings 9301.00.30, 9301.00.60 and 9301.00.90 are superseded by:

"9301	: Military weapons, other than revolvers, pistols and the arms of heading 9307:	:	:	:
	: Artillery weapons (for example, guns, howitzers and mortars:	:	:	:
9301.11.00	: Self-propelled	: Free	:	: 27.5%
9301.19.00	: Other	: Free	:	: 27.5%
9301.20.00	: Rocket launchers; flame-throwers; grenade launchers; torpedo tubes and similar projectors	: Free	:	: 27.5%
9301.90	: Other:	:	:	:
9301.90.30	: Rifles	: 4.7% on the value of the rifle + 20% on the value of the telescopic sight, if any	: Free (A,CA,E,IL,J, MX) : [See Annex III(D)2 to this proclamation](JO)	: 65%
9301.90.60	: Shotguns	: 2.6%	: Free (A,CA,E,IL,J, JO,MX)	: 65%
9301.90.90	: Other	: Free	:	: 27.5%"

(283). Subheadings 9305.90 through 9305.90.60 and any intervening text to such subheadings are superseded by:

	:[Parts and accessories of articles of headings...]	:	:	:
	: "Other:	:	:	:
9305.91	: Of military weapons of heading 9301:	:	:	:
9305.91.10	: Of rifles	: Free	:	: 55%
9305.91.20	: Of shotguns	: Free	:	: 55%
9305.91.30	: Other	: Free	:	: 27.5%
9305.99	: Other:	:	:	:
9305.99.40	: Of articles of heading 9303 other than shotguns or rifles	: Free	:	: 27.5%
9305.99.50	: Of articles of subheading 9304.00.20 or 9304.00.40	: 3.9%	: Free (A,CA,E,IL,J, JO,MX)	: 70%
9305.99.60	: Other	: 2.9%	: Free (A,CA,E,IL,J, JO,MX)	: 45%"

(284). Note 1(u) to chapter 95 is modified by deleting "gloves" and inserting "gloves, mittens and mitts" in lieu thereof.

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(285). The following note to chapter 95 is inserted in numerical sequence:

"4. Heading 9503 does not cover articles which, on account of their design, shape or constituent material, are identifiable as intended exclusively for animals, e.g., "pet toys" (classification in their own appropriate heading)."

(286). The article description of subheading 9504.30.00 is modified to read:

"Other games, operated by coins, banknotes (paper currency), discs or other similar articles, other than bowling alley equipment; parts and accessories thereof"

(287). The article description of subheading 9504.90.40 is modified to read:

"Game machines, other than those operated by coins, banknotes (paper currency), discs or other similar articles; parts and accessories thereof"

(288). Heading 9508.00.00 is superseded by:

"9508	Merry-go-rounds, boat-swings, shooting galleries and other fairground amusements; traveling circuses and traveling menageries; traveling theaters; parts and accessories thereof:			
9508.10.00	Traveling circuses and traveling menageries; parts and accessories	Free		35%
9508.90.00	Other	Free		35%"

(289)(a). Subheading 9613.30.00 is deleted.

(b). Subheadings 9613.80.20 through 9613.80.80 and any intervening text to such subheadings are superseded by:

	[Cigarette lighters and other lighters, whether...]			
	[Other lighters:]			
"9613.80.10	Table lighters	4.8%	Free (A,CA,E,IL,J, JO,MX)	60%"
	Other:			
9613.80.20	Electrical	3.9%	Free (A,B,CA,E,IL ,J,JO,MX)	35%
	Other:			
9613.80.40	Of precious metal (except silver), of precious or semiprecious stones or of such metal and such stones	3.6%	Free (A,CA,E,IL, J,JO,MX)	80%
	Other:			
9613.80.60	Valued not over $5 per dozen pieces	8%	Free (A,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	110%
9613.80.80	Valued over $5 per dozen pieces	9%	Free (A,CA,E,IL, J,MX) [See Annex III(D)2 to this proclamation](JO)	110%"

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(290). Note 1(a) to chapter 97 is superseded by:

"(a) Unused postage or revenue stamps, postal stationary (stamped paper) or the like, of heading 4907;"

(291). The article description of heading 9704.00.00 is modified by deleting "used, or if unused not of current or new issue in the country to which they are destined" and inserting "used or unused, other than those of heading 4907" in lieu thereof.

(292). The following heading is inserted in subchapter XVII of chapter 98 in numerical sequence:

"9817.64.01	: Footwear, other than goods of heading 9021, of a kind for supporting or holding the foot following an illness, operation or injury, provided that such footwear is (1) made to measure and (2) presented singly and not in pairs and designed to fit either foot equally.....	: Free	:	: The rate applicable in the absence of this heading"

Annex II

RECTIFICATIONS TO GENERAL NOTE 12 TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods of Mexico and to goods of Canada under the terms of general note 12 to the Harmonized Tariff Schedule of the United States (HTS) that are entered, or withdrawn from warehouse for consumption, on or after the later of (i) January 1, 2002, or (ii) the fifteenth day after the date of publication of this proclamation in the Federal Register, the tariff classification rules ("TCRs") set forth in subdivision (t) of such general note 12 to the HTS are modified as provided herein:

1. The TCR for chapter 13 is deleted and the following new TCR is inserted in lieu thereof:

"A change to headings 1301 through 1302 from any other chapter, except from concentrates of poppy straw of subheading 2939.11."

2. TCR 10 for chapter 19 is deleted and the following new TCR 10 is inserted in lieu thereof:

"10. A change to subheadings 1904.30 through 1904.90 from any other chapter."

3. TCR 5 for chapter 20 is deleted and the following new TCR 5 is inserted in lieu thereof:

"5. A change to subheadings 2009.11 through 2009.39 from any other chapter, except from heading 0805."

4. TCR 6 for chapter 20 is deleted and the following new TCR 6 is inserted in lieu thereof:

"6. A change to subheadings 2009.41 through 2009.80 from any other chapter."

5. TCR 6 for chapter 28 is deleted and the following new TCRs are inserted in lieu thereof:

"6. A change to subheadings 2805.11 through 2805.12 from any other subheading, including another subheading within that group.

6A. (A) A change to other alkali metals of subheading 2805.19 from other alkaline earth metals of subheading 2805.19 or from any other subheading; or

(B) A change to other alkali earth metals of subheading 2805.19 from other alkali metals of subheading 2805.19 or from any other subheading.

6B. A change to subheadings 2805.30 through 2805.40 from any other subheading, including another subheading within that group."

6. TCR 14 for chapter 28 is deleted and the following new TCRs are inserted in lieu thereof:

"14. A change to subheading 2816.10 from any other subheading.

14A. (A) A change to oxide, hydroxide or peroxide of strontium of subheading 2816.40 from oxide, hydroxide or peroxide of barium of subheading 2816.40 or from any other subheading.

(B) A change to oxide, hydroxide or peroxide of barium of subheading 2816.40 from oxide, hydroxide or peroxide of strontium of subheading 2816.40 or from any other subheading.

14B. A change to subheadings 2817.00 through 2818.30 from any other subheading, including another subheading within that group."

7. TCR 22 for chapter 28 is deleted and the following new TCRs are inserted in lieu thereof:

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"22. A change to subheadings 2825.10 through 2826.90 from any other subheading, including another subheading within that group.

22A. A change to subheadings 2827.10 through 2827.36 from any other subheading, including another subheading within that group.

22B. (A) A change to barium chloride of subheading 2827.39 from other chlorides of subheading 2827.39 or from any other subheading; or

(B) A change to other chlorides of subheading 2827.39 from barium chloride of subheading 2827.39 or from any other subheading.

22C. A change to subheadings 2827.41 through 2827.60 from any other subheading, including another subheading within that group.

22D. A change to subheadings 2828.10 through 2828.90 from any other subheading, including another subheading within that group."

8. TCR 25 for chapter 28 is deleted and the following new TCRs are inserted in lieu thereof:

"25. A change to subheadings 2830.10 through 2833.40 from any other subheading, including another subheading within that group.

25A. A change to subheadings 2834.10 through 2834.21 from any other subheading, including another subheading within that group.

25B. (A) A change to bismuth nitrates of subheading 2834.29 from other nitrates of subheading 2834.29 or from any other subheading; or

(B) A change to other nitrates of subheading 2834.29 from bismuth nitrates of subheading 2834.29 or from any other subheading.

25C. A change to subheadings 2835.10 through 2835.39 from any other subheading, including another subheading within that group."

9. TCR 29 for chapter 28 is deleted and the following new TCRs are inserted in lieu thereof:

"29. A change to subheadings 2837.11 through 2840.30 from any other subheading, including another subheading within that group.

29A. A change to subheadings 2841.10 through 2841.30 from any other subheading, including another subheading within that group.

29B. (A) A change to potassium dichromate of subheading 2841.50 from other chromates, dichromates or peroxochromates of subheading 2841.50 or from any other subheading; or

(B) A change to other chromates, dichromates or peroxochromates of subheading 2841.50 from potassium dichromate of subheading 2841.50 or from any other subheading.

29C. A change to subheadings 2841.61 through 2841.90 from any other subheading, including another subheading within that group.

29D. (A) A change to double or complex silicates, including chemically defined aluminosilicates, of subheading 2842.10 from non-chemically defined aluminosilicates of subheading 2842.10 or from any other subheading;

(B) A change to non-chemically defined aluminosilicates of subheading 2842.10 from any other chapter, except from chapters 28 through 38; or

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(C) A change to non-chemically defined aluminosilicates of subheading 2842.10 from double or complex silicates, including chemically defined aluminosilicates, of subheading 2842.10 or from any other subheading within chapters 28 through 38, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

29E. A change to subheading 2842.90 from any other subheading.

29F. A change to subheadings 2843.10 through 2850.00 from any other subheading, including another subheading within that group."

10. TCR 5 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof:

"5. (A) A change to subheadings 2903.11 through 2903.15 from any other subheading, including another subheading within that group, except from headings 2901 through 2902; or

(B) A change to subheadings 2903.11 through 2903.15 from headings 2901 through 2902, whether or not there is also a change from any other subheading, including another subheading within subheadings 2903.11 through 2903.15, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

5A. (A) A change to 1,2-dichloropropane (propylene dichloride) or dichlorobutanes of subheading 2903.19 from other saturated chlorinated derivatives of acyclic hydrocarbons of subheading 2903.19 or any other subheading, except from heading 2901 through 2902;

(B) A change to 1,2-dichloropropane (propylene dichloride) or dichlorobutanes of subheading 2903.19 from heading 2901 through 2902, whether or not there is also a change from other saturated chlorinated derivatives of acyclic hydrocarbons of subheading 2903.19 or any other subheading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used;

(C) A change to other saturated chlorinated derivatives of acyclic hydrocarbons of subheading 2903.19 from 1,2-dichloropropane (propylene dichloride) or dichlorobutanes of subheading 2903.19 or from any other subheading, except from headings 2901 through 2902; or

(D) A change to other saturated chlorinated derivatives of acyclic hydrocarbons of subheading 2903.19 from headings 2901 through 2902, whether or not there is also a change from 1,2-dichloropropane (propylene dichloride) or dichlorobutanes of subheading 2903.19 or from any other subheading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

5B. (A) A change to subheadings 2903.21 through 2903.30 from any other subheading, including another subheading within that group, except from headings 2901 through 2902; or

(B) A change to subheadings 2903.21 through 2903.30 from headings 2901 through 2902, whether or not there is also a change from any other subheading, including another subheading within subheadings 2903.21 through 2903.30, provided there is a regional value content of not less than:

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(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

11. TCR 11 for chapter 29 is deleted and the following new TCR is inserted in lieu thereof:

"11. A change to subheadings 2905.51 through 2905.59 from any subheading outside that group."

12. TCR 12 for chapter 29 is deleted and the following new TCR is inserted in lieu thereof:

"12. A change to subheadings 2906.11 through 2906.29 from any other subheading, including another subheading within that group.

12A. A change to subheadings 2907.11 through 2907.23 from any other subheading, including another subheading within that group.

12B. (A) A change to phenol-alcohols of subheading 2907.29 from polyphenols of subheading 2907.29 or from any other subheading; or

(B) A change to polyphenols of subheading 2907.29 from phenol-alcohols of subheading 2907.29 or from any other subheading."

13. TCR 36 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof:

"36. A change to subheadings 2918.11 through 2918.16 from any other subheading, including another subheading within that group.

36A. (A) A change to phenylglycolic acid (mandelic acid), its salts or esters of subheading 2918.19 from any other good of subheading 2918.19 or from any other subheading; or

(B) A change to any other good of subheading 2918.19 from phenylglycolic acid (mandelic acid), its salts or esters of subheading 2918.19 or from any other subheading.

36B. A change to subheading 2918.21 from any other subheading."

14. TCR 46 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof:

"46. (A) A change to subheadings 2921.41 through 2921.45 from any other heading, except from headings 2901, 2902, 2904, 2916, 2917 or 2926; or

(B) A change to subheadings 2921.41 through 2921.45 from any other subheading within heading 2921, including another subheading within that group, or headings 2901, 2902, 2904, 2916, 2917 or 2926, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

46A. (A) A change to subheadings 2921.46 through 2921.49 from any other heading, except from headings 2901, 2902, 2904, 2916, 2917 or 2926; or

(B) A change to subheadings 2921.46 through 2921.49 from any subheading outside that group within heading 2921 or headings 2901, 2902, 2904, 2916, 2917 or 2926, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

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468. (A) A change to subheadings 2921.51 through 2921.59 from any other heading, except from headings 2901, 2902, 2904, 2916, 2917 or 2926; or

(B) A change to subheadings 2921.51 through 2921.59 from any other subheading within heading 2921, including another subheading within that group, or headings 2901, 2902, 2904, 2916, 2917 or 2926, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

15. TCR 47 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof:

"47. (A) A change to subheadings 2922.11 through 2922.13 from any other heading, except from headings 2905 through 2921; or

(B) A change to subheadings 2922.11 through 2922.13 from any other subheading within heading 2922, including another subheading within that group, or headings 2905 through 2921, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

47A. (A) A change to subheadings 2922.14 through 2922.19 from any other heading, except from headings 2905 through 2921; or

(B) A change to subheadings 2922.14 through 2922.19 from any subheading outside that group within heading 2922 or headings 2905 through 2921, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

47B. (A) A change to subheadings 2922.21 through 2922.29 from any other heading, except from headings 2905 through 2921; or

(B) A change to subheadings 2922.21 through 2922.29 from any other subheading within heading 2922, including another subheading within that group, or headings 2905 through 2921, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

47C. (A) A change to subheadings 2922.31 through 2922.39 from any other heading, except from headings 2905 through 2921; or

(B) A change to subheadings 2922.31 through 2922.39 from any subheading outside that group within heading 2922 or headings 2905 through 2921, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

47D. (A) A change to subheadings 2922.41 through 2922.43 from any other heading, except from headings 2905 through 2921; or

(B) A change to subheadings 2922.41 through 2922.43 from any other subheading within heading 2922, including another subheading within that group, or headings 2905 through 2921, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

47E. (A) A change to subheadings 2922.44 through 2922.49 from any other heading, except from headings 2905 through 2921; or

(B) A change to subheadings 2922.44 through 2922.49 from any subheading outside that group within heading 2922 or headings 2905 through 2921, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

47F. (A) A change to subheading 2922.50 from any other heading, except from headings 2905 through 2921; or

(B) A change to subheading 2922.50 from any other subheading within heading 2922 or headings 2905 through 2921, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

16. TCR 49 for chapter 29 is deleted and the following new TCR is inserted in lieu thereof:

"49. A change to subheadings 2924.11 through 2924.19 from any subheading outside that group."

17. TCR 51 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof:

"51. (A) A change to subheading 2924.23 from any other subheading, except from subheadings 2917.20 or 2924.24 through 2924.29;

(B) A change to 2-acetamidobenzoic acid (N-acetylanthranilic acid) of subheading 2924.23 from its salts of subheading 2924.23 or subheadings 2917.20 or 2924.24 through 2924.29, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used; or

(C) A change to salts of subheading 2924.23 from 2-acetamidobenzoic acid (N-acetylanthranilic acid) of subheading 2924.23 or subheadings 2917.20 or 2924.24 through 2924.29, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

51A. (A) A change to subheadings 2924.24 through 2924.29 from any subheading outside that group, except from subheadings 2917.20 or 2924.23; or

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(B) A change to subheadings 2924.24 through 2924.29 from subheading 2917.20 or from 2-acetamidobenzoic acid (N-acetylanthranilic acid) of subheading 2924.23, whether or not there is also a change from any subheading outside that group, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

18. TCR 52 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof:

"52. A change to subheading 2925.11 from any other subheading.

52A. A change to subheadings 2925.12 through 2925.19 from any subheading outside that group.

52B. A change to subheading 2925.20 from any other subheading.

52C. A change to subheadings 2926.10 through 2926.20 from any other subheading, including another subheading within that group.

52D. A change to subheadings 2926.30 through 2926.90 from any subheading outside that group.

52E. A change to headings 2927 through 2928 from any other heading, including another heading within that group."

19. TCR 56 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof:

"56. (A) A change to subheadings 2932.11 through 2932.94 from any other heading; or

(B) A change to subheadings 2932.11 through 2932.94 from any other subheading within heading 2932, including another subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

56A. (A) A change to subheadings 2932.95 through 2932.99 from any other heading; or

(B) A change to subheadings 2932.95 through 2932.99 from any subheading outside that group within heading 2932, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

20. TCR 57 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof:

"57. (A) A change to subheadings 2933.11 through 2933.32 from any other heading; or

(B) A change to subheadings 2933.11 through 2933.32 from any other subheading within heading 2933, including another subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

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57A. (A) A change to subheadings 2933.33 through 2933.39 from any other heading; or

(B) A change to subheadings 2933.33 through 2933.39 from any subheading outside that group within heading 2933, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

57B. (A) A change to subheadings 2933.41 through 2933.49 from any other heading; or

(B) A change to subheadings 2933.41 through 2933.49 from any subheading outside that group within heading 2933, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

57C. (A) A change to subheadings 2933.52 through 2933.54 from any other heading; or

(B) A change to subheadings 2933.52 through 2933.54 from any subheading outside that group within heading 2933, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

57D. (A) A change to subheadings 2933.55 through 2933.59 from any other heading; or

(B) A change to subheadings 2933.55 through 2933.59 from any subheading outside that group within heading 2933, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

57E. (A) A change to subheadings 2933.61 through 2933.69 from any other heading; or

(B) A change to subheadings 2933.61 through 2933.69 from any other subheading within heading 2933, including another subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

21. TCR 59 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof:

"59. (A) A change to subheadings 2933.72 through 2933.79 from any other heading; or

(B) A change to subheadings 2933.72 through 2933.79 from any subheading outside that group within heading 2933, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

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59A. (A) A change to subheadings 2933.91 through 2933.99 from any other heading; or

(B) A change to subheadings 2933.91 through 2933.99 from any subheading outside that group within heading 2933, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

22. TCR 60 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof:

"60. A change to subheadings 2934.10 through 2934.30 from any other subheading, including another subheading within that group.

60A. (A) A change to subheadings 2934.91 through 2934.99 from any subheading outside that group; or

(B) A change to nucleic acids of subheadings 2934.91 through 2934.99 from other heterocyclic compounds of subheading 2934.91 through 2934.99."

23. TCR 63 for chapter 29 is deleted and the following new TCR is inserted in lieu thereof:

"63. (A) A change to subheadings 2937.11 through 2937.90 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheadings 2937.11 through 2937.90 from any other subheading within chapters 28 through 38, including another subheading within that group, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

24. TCR 65 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof:

"65. (A) A change to concentrates of poppy straw of subheading 2939.11 from any other subheading, except from chapter 13; or

(B) A change to any other good of subheading 2939.11 from concentrates of poppy straw of subheading 2939.11 or any other subheading, except from subheading 2939.19.

65A. A change to subheading 2939.19 from concentrates of poppy straw of subheading 2939.11 or any other subheading, except from any other good of subheading 2939.11.

65B. A change to subheadings 2939.21 through 2939.42 from any other subheading, including another subheading within that group.

65C. A change to subheadings 2939.43 through 2939.49 from any subheading outside that group.

65D. A change to subheadings 2939.51 through 2939.59 from any subheading outside that group.

65E. A change to subheadings 2939.61 through 2939.69 from any other subheading, including another subheading within that group.

65F. (A) A change to subheadings 2939.91 through 2939.99 from any subheading outside that group;

(B) A change to nicotine or its salts of subheading 2939.99 from any other good of subheading 2939.99; or

(C) A change to any other good of subheading 2939.99 from nicotine or its salts of subheading 2939.99."

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25. TCRs 1 through 12 for chapter 30 are deleted and the following new TCRs are inserted in lieu thereof:

"1. (A) A change to subheadings 3001.10 through 3001.20 from any other heading, except from subheading 3006.80; or

(B) A change to subheadings 3001.10 through 3001.20 from any other subheading within heading 3001, including another subheading within that group, whether or not there is also a change from any other heading, except from subheading 3006.80, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

2. A change to subheading 3001.90 from any other subheading, except from subheading 3006.80.

3. A change to subheadings 3002.10 through 3002.90 from any other subheading, including another subheading within that group, except from subheading 3006.80.

4. (A) A change to subheadings 3003.10 through 3003.90 from any other heading, except from subheading 3006.80; or

(B) A change to subheadings 3003.10 through 3003.90 from any other subheading within heading 3003, whether or not there is also a change from any other heading, except from subheading 3006.80, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

5. (A) A change to subheadings 3004.10 through 3004.31 from any other heading, except from heading 3003 or subheading 3006.80; or

(B) A change to subheadings 3004.10 through 3004.31 from heading 3003 or any other subheading within heading 3004, including another subheading within that group, whether or not there is also a change from any other heading, except from subheading 3006.80, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

6. (A) A change to hormone derivatives of corticosteroid hormones of subheading 3004.32 from corticosteroid hormones or structural analogues of corticosteroid hormones of subheading 3004.32 or any other subheading, except from subheadings 3004.39 or 3006.80;

(B) A change to structural analogues of corticosteroid hormones of subheading 3004.32 from corticosteroid hormones or derivatives of subheading 3004.32 or any other subheading, except from subheadings 3004.39 or 3006.80;

(C) A change to any other good of subheading 3004.32 from any other heading, except from heading 3003 or subheading 3006.80; or

(D) A change to any other good of subheading 3004.32 from hormone derivatives or structural analogues of corticosteroid hormones of subheading 3004.32, heading 3003, or any other subheading within heading 3004, whether or not there is also a change from any other heading, except from subheading 3006.80, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

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7. A change to subheading 3004.39 from any other subheading, except from subheading 3006.80.

8. (A) A change to subheadings 3004.40 through 3004.50 from any other heading, except from heading 3003 or subheading 3006.80; or

(B) A change to subheadings 3004.40 through 3004.50 from heading 3003 or any other subheading within heading 3004, including another subheading within that group, whether or not there is also a change from any other heading, except from subheading 3006.80, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

9. A change to subheading 3004.90 from any other subheading, except from subheading 3006.80.

10. (A) A change to subheadings 3005.10 through 3005.90 from any other heading, except from subheading 3006.80; or

(B) A change to subheadings 3005.10 through 3005.90 from any other subheading within heading 3005, whether or not there is also a change from any other heading, except from subheading 3006.80, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

11. (A) A change to subheading 3006.10 from any other heading; or

(B) A change to subheading 3006.10 from any other subheading within heading 3006, except from subheading 3006.80, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

12. A change to subheading 3006.20 from any other subheading, except from subheading 3006.80.

13. (A) A change to subheadings 3006.30 through 3006.60 from any other heading; or

(B) A change to subheadings 3006.30 through 3006.60 from any other subheading within heading 3006, including another subheading within that group, except from subheading 3006.80, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

14. (A) A change to subheading 3006.70 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheading 3006.70 from any other subheading within chapters 28 through 38, except from subheading 3006.80, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

15. A change to subheading 3006.80 from any other chapter."

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26. TCRs 1 and 2 for chapter 34 are deleted and the following new TCRs are inserted in lieu thereof:

"1. (A) A change to subheading 3401.30 from any other subheading, except from subheading 3402.90; or

(B) A change to subheading 3401.30 from subheading 3402.90, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

(1) 65 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

2. (A) A change to subheadings 3402.11 through 3402.12 from any other heading, except to linear alkylbenzene sulfonic acid or linear alkylbenzene sulfonates of subheading 3402.11 from linear alkylbenzene of heading 3817; or

(B) A change to subheadings 3402.11 through 3402.12 from any other subheading, including another subheading within heading 3402,whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 65 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

27. TCR 5 for chapter 34 is deleted and the following new TCR is inserted in lieu thereof:

"5. (A) A change to subheadings 3402.20 through 3402.90 from any subheading outside that group, except from subheading 3401.30; or

(B) A change to subheadings 3402.20 through 3402.90 from any other subheading within that group or from subheading 3401.30, whether or not there is also a change from any subheading outside that group, provided there is a regional value content of not less than:

(1) 65 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

28. TCRs 19 and 20 for chapter 38 are deleted and the following new TCR is inserted in lieu thereof:

"19. A change to headings 3817 through 3819 from any other heading, including another heading within that group."

29. TCR 23 for chapter 38 is deleted and the following new TCR is inserted in lieu thereof:

"23. (A) A change to certified reference materials of heading 3822 from any other good of heading 3822 or any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used;

(B) A change to any other good of heading 3822 from any other chapter, except from chapters 28 through 38; or

(C) A change to any other good of heading 3822 from any other subheading within chapters 28 through 38, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

30. The following new TCRs for chapter 38 are inserted in numerical sequence:

"31. A change to subheadings 3825.10 through 3825.69 from any other chapter, except from chapters 28 through 38, 40 or 90.

32. (A) A change to subheading 3825.90 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheading 3825.90 from any other subheading within chapters 28 through 38, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

31. TCR 3 for chapter 40 is deleted and the following new TCRs are inserted in lieu thereof:

"3. A change to subheading 4009.11 from any other heading, except from headings 4010 through 4017.

3A. (A) A change to tubes, pipes or hoses of subheading 4009.12, of a kind for use in a motor vehicle of tariff items 8702.10.01, 8702.10.02 or 8702.90.01 through 8702.90.03, subheadings 8703.21 through 8703.90, 8704.21 or 8704.31 or heading 8711 from any other heading, except from headings 4010 through 4017;

(B) A change to tubes, pipes or hoses of subheading 4009.12, of a kind for use in a motor vehicle of tariff items 8702.10.01, 8702.10.02 or 8702.90.01 through 8702.90.03, subheadings 8703.21 through 8703.90, 8704.21 or 8704.31 or heading 8711 from subheadings 4009.11 through 4017.00, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction method is used, or

(2) 50 percent where the net cost method is used; or

(C) A change to tubes, pipes or hoses of subheading 4009.12, other than those of a kind for use in a motor vehicle of tariff items 8702.10.01, 8702.10.02 or 8702.90.01 through 8702.90.03, subheadings 8703.21 through 8703.90, 8704.21 or 8704.31 or heading 8711 from any other heading, except from headings 4010 through 4017.

3B. A change to subheading 4009.21 from any other heading, except from headings 4010 through 4017.

3C. (A) A change to tubes, pipes or hoses of subheading 4009.22, of a kind for use in a motor vehicle of tariff items 8702.10.01, 8702.10.02 or 8702.90.01 through 8702.90.03, subheadings 8703.21 through 8703.90, 8704.21 or 8704.31 or heading 8711 from any other heading, except from headings 4010 through 4017;

(B) A change to tubes, pipes or hoses of subheading 4009.22, of a kind for use in a motor vehicle of tariff items 8702.10.01, 8702.10.02 or 8702.90.01 through 8702.90.03, subheadings 8703.21 through 8703.90, 8704.21 or 8704.31 or heading 8711 from subheadings 4009.11 through 4017.00, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction method is used, or

(2) 50 percent where the net cost method is used; or

(C) A change to tubes, pipes or hoses of subheading 4009.22, other than those of a kind for use in a motor vehicle of tariff items 8702.10.01, 8702.10.02 or 8702.90.01 through 8702.90.03, subheadings 8703.21 through 8703.90, 8704.21 or 8704.31 or heading 8711 from any other heading, except from headings 4010 through 4017.

3D. A change to subheading 4009.31 from any other heading, except from headings 4010 through 4017.

3E. (A) A change to tubes, pipes or hoses of subheading 4009.32, of a kind for use in a motor vehicle of tariff items 8702.10.01, 8702.10.02 or 8702.90.01 through 8702.90.03, subheadings 8703.21 through 8703.90, 8704.21 or 8704.31 or heading 8711 from any other heading, except from headings 4010 through 4017;

(B) A change to tubes, pipes or hoses of subheading 4009.32, of a kind for use in a motor vehicle of tariff items 8702.10.01, 8702.10.02 or 8702.90.01 through 8702.90.03, subheadings 8703.21 through 8703.90, 8704.21 or 8704.31 or heading 8711 from subheading 4009.11 through 4017.00, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction method is used, or

(2) 50 percent where the net cost method is used; or

(C) A change to tubes, pipes or hoses of subheading 4009.32, other than those of a kind for use in a motor vehicle of tariff items 8702.10.01, 8702.10.02 or 8702.90.01 through 8702.90.03, subheadings 8703.21 through 8703.90, 8704.21 or 8704.31 or heading 8711 from any other heading, except from headings 4010 through 4017.

3F. A change to subheading 4009.41 from any other heading, except from headings 4010 through 4017. .

3G. (A) A change to tubes, pipes or hoses of subheading 4009.42, of a kind for use in a motor vehicle of tariff items 8702.10.01, 8702.10.02 or 8702.90.01 through 8702.90.03, subheadings 8703.21 through 8703.90, 8704.21 or 8704.31 or heading 8711 from any other heading, except from headings 4010 through 4017;

(B) A change to tubes, pipes or hoses of subheading 4009.42, of a kind for use in a motor vehicle of tariff items 8702.10.01, 8702.10.02 or 8702.90.01 through 8702.90.03, subheadings 8703.21 through 8703.90, 8704.21 or 8704.31 or heading 8711 from subheadings 4009.11 through 4017.00, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction method is used, or

(2) 50 percent where the net cost method is used; or

(C) A change to tubes, pipes or hoses of subheading 4009.42, other than those of a kind for use in a motor vehicle of tariff items 8702.10.01, 8702.10.02 or 8702.90.01 through 8702.90.03, subheading 8703.21 through 8703.90, 8704.21 or 8704.31 or heading 8711 from any other heading, except from headings 4010 through 4017."

32. TCR 6 for chapter 40 is deleted and the following new TCR is inserted in lieu thereof:

"6. A change to subheadings 4012.11 through 4012.19 from any subheading outside that group, except from tariff items 4012.20.15 or 4012.20.60."

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33. TCR 1 for chapter 41 is deleted and the following new TCRs are inserted in lieu thereof:

"1. (A) A change to hides or skins of heading 4101 which have undergone a tanning (including pre-tanning) process which is reversible from any other good of heading 4101 or from any other chapter; or

(B) A change to any other good of heading 4101 from any other chapter.

1A. (A) A change to hides or skins of heading 4102 which have undergone a tanning (including pre-tanning) process which is reversible from any other good of heading 4102 or from any other chapter; or

(B) A change to any other good of heading 4102 from any other chapter.

1B. (A) A change to hides or skins of heading 4103 which have undergone a tanning (including pre-tanning) process which is reversible from any other good of heading 4103 or from any other chapter; or

(B) A change to any other good of heading 4103 from any other chapter."

34. TCR 2 for chapter 41 is deleted and the following new TCR is inserted in lieu thereof:

"2. A change to heading 4104 from any other heading, except from hides or skins of heading 4101 which have undergone a tanning (including pre-tanning) process which is reversible or from headings 4105 through 4115."

35. TCR 3 for chapter 41 is deleted and the following new TCR is inserted in lieu thereof:

"3. A change to heading 4105 from heading 4102, tariff item 4105.10.10 or any other chapter, except from hides or skins of heading 4102 which have undergone a tanning (including pre-tanning) process which is reversible."

36. TCR 4 for chapter 41 is deleted and the following new TCRs are inserted in lieu thereof:

"4. A change to subheadings 4106.21 through 4106.22 from heading 4103, tariff item 4106.21.10 or any other chapter, except from hides or skins of subheading 4103.10 which have undergone a tanning (including pre-tanning) process which is reversible.

4A. A change to subheadings 4106.31 through 4106.32 from heading 4103, tariff item 4106.31.10 or any other chapter, except from hides or skins of subheading 4103.30 which have undergone a tanning (including pre-tanning) process which is reversible.

4B. A change to subheadings 4106.40 through 4106.92 from heading 4103 or from any other chapter, except from hides or skins of subheading 4103.20 or 4103.90 which have undergone a tanning (including pre-tanning) process which is reversible."

37. TCR 5 for chapter 41 is deleted and the following new TCR is inserted in lieu thereof:

"5. A change to heading 4107 from heading 4101 or from any other chapter, except from hides or skins of heading 4101 which have undergone a tanning (including pre-tanning) process which is reversible."

38. TCR 6 for chapter 41 is deleted and the following new TCRs are inserted in lieu thereof:

"6. A change to heading 4112 from heading 4102, tariff item 4105.10.10 or any other chapter, except from hides or skins of heading 4102 which have undergone a tanning (including pre-tanning) process which is reversible.

7. A change to heading 4113 from heading 4103, tariff item 4106.21.10 or 4106.31.10 or any other chapter, except from hides or skins of heading 4103 which have undergone a tanning (including pre-tanning) process which is reversible.

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8. A change to headings 4114 through 4115 from headings 4101 through 4103 or from any other chapter, except from hides or skins of headings 4101 through 4103 which have undergone a tanning (including pre-tanning) process which is reversible."

39. TCR 1 for chapter 48 is deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to heading 4801 from any other chapter.

1A. (A) A change to paper or paperboard in strips or rolls of a width not exceeding 15cm of heading 4802 from strips or rolls of a width exceeding 15cm of heading 4802 or from any other heading, except from headings 4817 through 4823;

(B) A change to paper or paperboard in rectangular (including square) sheets with the larger dimension not exceeding 36 cm or the other dimension not exceeding 15 cm in the unfolded state of heading 4802 from strips or rolls of a width exceeding 15cm of heading 4802, paper or paperboard in rectangular (including square) sheets with the larger dimension exceeding 36 cm and the other dimension exceeding 15 cm in the unfolded state of heading 4802 or from any other heading, except from headings 4817 through 4823; or

(C) A change to any other good of heading 4802 from any other chapter.

1B. A change to headings 4803 through 4807 from any other chapter."

40. TCR 3 for chapter 48 is deleted and the following new TCRs are inserted in lieu thereof:

"3. (A) A change to paper or paperboard in strips or rolls of a width not exceeding 15cm of heading 4810 from strips or rolls of a width exceeding 15cm of heading 4810 or from any other heading, except from headings 4817 through 4823;

(B) A change to paper or paperboard in rectangular (including square) sheets with the larger dimension not exceeding 36 cm or the other dimension not exceeding 15 cm in the unfolded state of heading 4810 from strips or rolls of a width exceeding 15cm of heading 4810, paper or paperboard in rectangular (including square) sheets with the larger dimension exceeding 36 cm and the other dimension exceeding 15 cm in the unfolded state of heading 4810 or from any other heading, except from headings 4817 through 4823; or

(C) A change to any other good of heading 4810 from any other chapter.

3A. (A) A change to paper or paperboard in strips or rolls of a width not exceeding 15cm of heading 4811 from strips or rolls of a width exceeding 15cm of heading 4811 or from any other heading, except from headings 4817 through 4823;

(B) A change to paper or paperboard in rectangular (including square) sheets with the larger dimension not exceeding 36 cm or the other dimension not exceeding 15 cm in the unfolded state of heading 4811 from strips or rolls of a width exceeding 15cm of heading 4811, paper or paperboard in rectangular (including square) sheets with the larger dimension exceeding 36 cm and the other dimension exceeding 15 cm in the unfolded state of heading 4811 or from any other heading, except from headings 4817 through 4823; or

(C) A change to any other good of heading 4811 from any other chapter.

3B. A change to headings 4812 through 4813 from any other chapter."

41. TCR 6 for chapter 48 is deleted and the following new TCRs are inserted in lieu thereof:

"6. A change to headings 4817 through 4822 from any heading outside that group, except from heading 4823.

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6A. (A) A change to strips or rolls of a width of 15 cm or less of heading 4823 from strips or rolls of a width exceeding 15 cm of heading 4823, other than strips or rolls of heading 4823 which but for their width would be classified in headings 4803, 4809 or 4814, or from any other heading, except from headings 4817 through 4822;

(B) A change to strips or rolls of a width exceeding 15 cm of heading 4823 from any other heading, except from headings 4801, 4804 through 4808 or 4817 through 4822; or

(C) A change to any other good of heading 4823 from strip or rolls of a width exceeding 15cm of heading 4823, other than strips or rolls of heading 4823 which but for their width would be classified in headings 4803, 4809 or 4814, or from any other heading, except from strip or rolls of a width exceeding 15cm but not exceeding 36cm or paper or paperboard in rectangular (including square) sheets with one side not exceeding 36 cm or the other side not exceeding 15 cm in the unfolded state of headings 4802, 4810 or 4811, or from headings 4817 through 4822."

42. The TCR for chapter 60 is modified by deleting "6002" and by inserting in lieu thereof "6006".

43. Chapter rule 1 for chapter 61 is modified by deleting "6002.43 or 6002.91 through 6002.93" and by inserting in lieu thereof "6005.31 through 6005.44 or 6006.10 through 6006.44".

44. Chapter rule 3 for chapter 61 is modified by deleting "6002" and by inserting in lieu thereof "6006".

45. TCRs 1 through 39, inclusive, for chapter 61 are each modified by deleting therefrom "6002" and by inserting in lieu thereof "6006".

46. TCRs 27(A), 30(A) and 32(A) for chapter 61 are each modified by deleting therefrom "tariff item 6002.92.10" and by inserting in lieu thereof "tariff items 6006.21.10, 6006.22.10, 6006.23.10 or 6006.24.10".

47. Chapter rule 1 for chapter 62 is modified by deleting "6002.43 or 6002.91 through 6002.93" and by inserting in lieu thereof "6005.31 through 6005.44 or 6006.10 through 6006.44".

48. TCRs 1 through 35, inclusive, 37 and 38 for chapter 62 are each modified by deleting therefrom "6002" and by inserting in lieu thereof "6006".

49. TCRs 1, 2, 3 and 4 for chapter 63 are each modified by deleting therefrom "6002" and by inserting in lieu thereof "6006".

50. TCR 1 for chapter 66 is modified by deleting therefrom "6002" and by inserting in lieu thereof "6006".

51. TCRs 2 through 4, inclusive, and TCR 6 for chapter 68 are each deleted, and the following new TCR 6 for chapter 68 is inserted in numerical sequence:

"6. (A) A change to fabricated asbestos fibers or mixtures with a basis of asbestos or with a basis of asbestos and magnesium carbonate of subheading 6812.90 from any other chapter;

(B) A change to yarn or thread of subheading 6812.90 from any other good of subheading 6812.90 or from any other subheading;

(C) A change to cords or string, whether or not plaited, of subheading 6812.90 from any other good of subheading 6812.90 or from any other subheading, except from woven or knitted fabric of subheading 6812.90;

(D) A change to woven or knitted fabric of subheading 6812.90 from any other good of subheading 6812.90 or from any other subheading, except from cords or string, whether or not plaited, of subheading 6812.90; or

(E) A change to any other good of subheadings 6812.60 through 6812.90 from fabricated asbestos fibers or mixtures with a basis of asbestos or with a basis of asbestos and magnesium carbonate, yarn or thread, cords or string, whether or not plaited, or woven or knitted fabric of subheading 6812.90 or from any subheading outside that group."

52. TCRs 1 through 3, inclusive, for chapter 81 are deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to subheadings 8101.10 through 8101.94 from any other chapter.

2. A change to subheading 8101.95 from any other subheading.

3. A change to subheadings 8101.96 through 8101.97 from any other chapter."

53. TCRs 5 through 7, inclusive, for chapter 81 are deleted and the following new TCRs are inserted in lieu thereof:

"5. A change to subheadings 8102.10 through 8102.94 from any other chapter.

6. A change to subheading 8102.95 from any other subheading.

7. A change to subheading 8102.96 from any other subheading, except from tariff item 8102.95.30.

7A. A change to subheading 8102.97 from any other chapter."

54. TCR 9 for chapter 81 is deleted and the following new TCR is inserted in lieu thereof:

"9. A change to subheadings 8103.20 through 8103.30 from any other chapter."

55. TCR 13 for chapter 81 is deleted and the following new TCR is inserted in lieu thereof:

"13. A change to subheadings 8105.20 through 8105.30 from any other chapter."

56. TCR 16 for chapter 81 is deleted and the following new TCR is inserted in lieu thereof:

"16. A change to subheadings 8107.20 through 8107.30 from any other chapter."

57. TCR 18 for chapter 81 is deleted and the following new TCR is inserted in lieu thereof:

"18. A change to subheadings 8108.20 through 8108.30 from any other chapter."

58. TCR 20 for chapter 81 is deleted and the following new TCR is inserted in lieu thereof:

"20. A change to subheadings 8109.20 through 8109.30 from any other chapter."

59. TCRs 32 and 33 for chapter 84 are each deleted and the following new TCRs are inserted in lieu thereof:

"32. (A) A change to self-contained window or wall type air conditioning machines of subheading 8415.10 from any other subheading, except from tariff item 8415.90.40 or assemblies incorporating more than one of the following: compressor, condenser, evaporator, connecting tubing;

(B) A change to "split-systems" of subheading 8415.10 from any other subheading, except from subheadings 8415.20 through 8415.83, tariff item 8415.90.40 or assemblies incorporating more than one of the following: compressor, condenser, evaporator, connecting tubing; or

(C) A change to "split-systems" of subheading 8415.10 from tariff item 8415.90.40 or assemblies incorporating more than one of the following: compressor, condenser, evaporator, connecting tubing, whether or not there is also a change from subheadings 8415.20 through 8415.83, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

33. (A) A change to subheadings 8415.20 through 8415.83 from any subheading outside that group, except from split systems of subheading 8415.10, tariff item 8415.90.40 or assemblies incorporating more than one of the following: compressor, condenser, evaporator, connecting tubing; or

(B) A change to subheadings 8415.20 through 8415.83 from tariff item 8415.90.40 or assemblies incorporating more than one of the following: compressor, condenser, evaporator, connecting tubing, whether or not there is also a change from any subheading outside that group, except from split systems of subheading 8415.10, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

60. TCR s 157 and 158 for chapter 84 are each deleted.

61. TCR 183 for chapter 84 is deleted and the following new TCRs are inserted in lieu thereof:

"183. (A) A change to subheadings 8467.11 through 8467.19 from any other heading; or

(B) A change to subheadings 8467.11 through 8467.19 from subheading 8467.91 or 8467.92, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

183A. (A) A change to subheadings 8467.21 through 8467.29 from any subheading outside that group, except from housings of subheading 8467.91 or 8467.99 or heading 8501; or

(B) A change to subheadings 8467.21 through 8467.29 from housings of subheading 8467.91 or 8467.99 or heading 8501, whether or not there is also a change from any subheading outside that group, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

183B. (A) A change to subheadings 8467.81 through 8467.89 from any other heading; or

(B) A change to subheadings 8467.81 through 8467.89 from subheading 8467.91 or 8467.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

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62. TCRs 15 and 16 for chapter 85 are each deleted.

63. TCR 88(A) for chapter 85 is modified by deleting "items 8542.13.40, 8542.14.40 or 8542.19.40" and by inserting in lieu thereof "item 8542.21.40".

64. TCR 89(A) for chapter 85 is modified by deleting "items 8542.13.40, 8542.14.40 or 8542.19.40" and by inserting in lieu thereof "item 8542.21.40".

65. TCR 92F(A) for chapter 85 is modified by deleting "items 8542.13.40, 8542.14.40 or 8542.19.40" and by inserting in lieu thereof "item 8542.21.40".

66. TCR 92G(A) for chapter 85 is modified by deleting "items 8542.13.40, 8542.14.40 or 8542.19.40" and by inserting in lieu thereof "item 8542.21.40".

67. TCR 92N(A) for chapter 85 is modified by deleting "items 8542.13.40, 8542.14.40 or 8542.19.40" and by inserting in lieu thereof "item 8542.21.40".

68. TCR 104 for chapter 85 is modified by deleting "items 8531.90.10" and by inserting in lieu thereof "items 8531.90.15".

69. TCR 106 for chapter 85 is deleted.

70. The subheading rule applicable to TCR 142 for chapter 85 is modified by deleting "8542.12 through 8542.50" and by inserting in lieu thereof "8542.10 through 8542.70"; and such TCR 142 is deleted and the following new TCR is inserted in lieu thereof:

"142. No required change in tariff classification to any of subheadings 8541.10 through 8542.90."

71. Chapter rule 3 for chapter 90 is modified by deleting "Tariff items 9009.90.10 and 9009.90.30 cover" and by inserting in lieu thereof "Tariff item 9009.99.40 covers".

72. TCR 21 for chapter 90 is modified by deleting "items 9009.90.10 or 9009.90.30" and by inserting in lieu thereof "item 9009.99.40".

73. TCRs 23 and 24 for chapter 90 are deleted and the following new TCRs are inserted in lieu thereof:

"24. A change to subheadings 9009.91 through 9009.93 from any other heading.

24A. A change to tariff item 9009.99.40 from subheadings 9009.91, 9009.92 or 9009.93, tariff item 9009.99.80 or any other heading, provided that at least one of the components of such assembly named in chapter rule 3 to chapter 90 is originating.

24B. A change to subheading 9009.99 from any other heading."

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74. TCR 5 for chapter 91 is deleted and the following new TCR is inserted in lieu thereof:

"5. A change to subheading 9112.20 from subheading 9112.90 or any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

Annex III

(A). Staged rate reductions of the rates of duty in the Rates of Duty 1-General subcolumn.

For each of the following provisions, the Rates of Duty 1-General subcolumn is modified by:

(i) deleting the rate of duty in such subcolumn and inserting, on the later of (a) January 1, 2002, or (b) the fifteenth day after the date of publication of this proclamation in the Federal Register, the rate of duty specified for such provision in the "Year 1" column in the table below in lieu thereof, and

(ii) on January 1 for each of the subsequent dated columns the rates of duty in the Rates of Duty 1-General subcolumn are deleted and the following rates of duty are inserted in such provisions in lieu thereof on the date specified.

HTS Subheading	Year 1	2003	2004
2905.49.20	6.9%	6.2%	5.5%
2905.59.30	2.5%	1.2%	Free
2905.59.90	6.9%	6.2%	5.5%
2921.49.38	8.5%	7.5%	6.5%
2922.39.14	7.9%	7.2%	6.5%
2922.39.25	7.9%	7.2%	6.5%
2922.39.45	0.7¢/kg + 8.3%	0.4¢/kg + 7.4%	6.5%
2924.23.10	0.7¢/kg + 8.8%	0.4¢/kg + 7.7%	6.5%
2924.23.70	7.9%	7.2%	6.5%
2924.23.75	0.7¢/kg + 8.8%	0.4¢/kg + 7.7%	6.5%
2924.29.71	7.9%	7.2%	6.5%
2924.29.76	0.7¢/kg + 8.8%	0.4¢/kg + 7.7%	6.5%
2925.19.42	8.2%	7.4%	6.5%
2926.30.20	7.9%	7.2%	6.5%
2926.90.43	7.9%	7.2%	6.5%
2926.90.48	9.2%	7.8%	6.5%
2932.99.61	7.9%	7.2%	6.5%
2933.39.31	8.5%	7.5%	6.5%
2933.49.08	0.7¢/kg + 8.4%	0.4¢/kg + 7.5%	6.5%
2933.49.30	7.4%	7%	6.5%
2933.49.60	7.9%	7.2%	6.5%
2933.49.70	0.7¢/kg + 8.4%	0.4¢/kg + 7.5%	6.5%
2933.59.46	8.5%	7.5%	6.5%
2933.79.08	7.9%	7.2%	6.5%
2933.99.06	7.5%	7%	6.5%
2933.99.17	7.7%	7.1%	6.5%
2933.99.22	7.9%	7.2%	6.5%

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HTS Subheading	Year 1	2003	2004
2933.99.61	8.5%	7.5%	6.5%
2933.99.79	7.9%	7.2%	6.5%
2933.99.82	0.7¢/kg + 8.4%	0.4¢/kg + 7.5%	6.5%
2934.99.08	0.7¢/kg + 8.4%	0.4¢/kg + 7.5%	6.5%
2934.99.12	7.4%	7%	6.5%
2934.99.15	7.9%	7.2%	6.5%
2934.99.16	7.7%	7.1%	6.5%
2934.99.18	7.3%	6.9%	6.5%
2934.99.39	7.9%	7.2%	6.5%
2934.99.44	0.7¢/kg + 8.4%	0.4¢/kg + 7.5%	6.5%
3817.00.10	0.2¢/kg + 8.7%	0.1¢/kg + 7.6%	6.5%
3817.00.15	0.2¢/kg + 8.7%	0.1¢/kg + 7.6%	6.5%
3817.00.20	0.7¢/kg + 7.9%	0.4¢/kg + 7.2%	6.5%
4802.20.20	0.2%	0.1%	Free
4802.20.40	0.6%	0.3%	Free
4802.30.50	0.5%	0.3%	Free
4802.30.60	0.4%	0.2%	Free
4802.30.70	0.6%	0.3%	Free
4802.54.10	0.5%	0.2%	Free
4802.54.20	0.4%	0.2%	Free
4802.54.40	0.6%	0.3%	Free
4802.54.50	0.2%	0.1%	Free
4802.54.60	0.6%	0.3%	Free
4802.55.10	0.5%	0.2%	Free
4802.55.20	0.3%	0.2%	Free
4802.55.30	0.4%	0.2%	Free
4802.55.50	0.6%	0.3%	Free
4802.55.60	0.2%	0.1%	Free
4802.55.70	0.6%	0.3%	Free
4802.56.10	0.5%	0.2%	Free
4802.56.20	0.3%	0.2%	Free
4802.56.30	0.4%	0.2%	Free
4802.56.50	0.6%	0.3%	Free
4802.56.60	0.2%	0.1%	Free
4802.56.70	0.6%	0.3%	Free
4802.57.10	0.5%	0.2%	Free
4802.57.20	0.3%	0.2%	Free

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HTS Subheading	Year 1	2003	2004
4802.57.30	0.4%	0.2%	Free
4802.58.10	0.5%	0.2%	Free
4802.58.20	0.3%	0.2%	Free
4802.58.40	0.6%	0.3%	Free
4802.58.50	0.2%	0.1%	Free
4802.58.60	0.6%	0.3%	Free
4802.61.10	0.5%	0.2%	Free
4802.61.20	0.3%	0.2%	Free
4802.61.40	0.6%	0.3%	Free
4802.61.50	0.2%	0.1%	Free
4802.61.60	0.6%	0.3%	Free
4802.62.10	0.5%	0.2%	Free
4802.62.20	0.3%	0.2%	Free
4802.62.40	0.6%	0.3%	Free
4802.62.50	0.2%	0.1%	Free
4802.62.60	0.6%	0.3%	Free
4802.69.10	0.5%	0.2%	Free
4802.69.20	0.3%	0.2%	Free
4805.11.00	0.8%	0.4%	Free
4805.12.10	0.8%	0.4%	Free
4805.19.10	0.8%	0.4%	Free
4805.24.50	0.3%	0.2%	Free
4805.24.90	0.8%	0.4%	Free
4805.91.20	0.9%	0.4%	Free
4805.91.50	0.3%	0.2%	Free
4805.91.90	0.8%	0.4%	Free
4805.92.20	1%	0.5%	Free
4805.93.20	1%	0.5%	Free
4807.00.91	0.6%	0.3%	Free
4807.00.92	0.5%	0.2%	Free
4810.13.11	0.2%	0.1%	Free
4810.13.13	0.3%	0.2%	Free
4810.13.19	0.5%	0.2%	Free
4810.13.20	0.5%	0.3%	Free
4810.13.50	0.6%	0.3%	Free
4810.13.60	0.2%	0.1%	Free
4810.13.70	0.6%	0.3%	Free

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HTS Subheading	Year 1	2003	2004
4810.14.11	0.2%	0.1%	Free
4810.14.13	0.3%	0.2%	Free
4810.14.19	0.5%	0.2%	Free
4810.14.20	0.5%	0.3%	Free
4810.14.50	0.6%	0.3%	Free
4810.14.60	0.2%	0.1%	Free
4810.14.70	0.6%	0.3%	Free
4810.19.11	0.2%	0.1%	Free
4810.19.13	0.3%	0.2%	Free
4810.19.19	0.5%	0.2%	Free
4810.19.20	0.5%	0.3%	Free
4810.22.10	0.5%	0.2%	Free
4810.22.50	0.6%	0.3%	Free
4810.22.60	0.2%	0.1%	Free
4810.22.70	0.6%	0.3%	Free
4810.29.10	0.5%	0.2%	Free
4810.29.50	0.6%	0.3%	Free
4810.29.60	0.2%	0.1%	Free
4810.29.70	0.6%	0.3%	Free
4810.31.30	0.8%	0.4%	Free
4810.31.65	1.1%	0.6%	Free
4810.32.30	0.8%	0.4%	Free
4810.32.65	1.1%	0.6%	Free
4810.39.14	0.4%	0.2%	Free
4810.39.30	0.8%	0.4%	Free
4810.39.65	1.1%	0.6%	Free
4810.92.14	0.4%	0.2%	Free
4810.92.30	0.8%	0.4%	Free
4810.92.65	1.1%	0.6%	Free
4810.99.10	0.4%	0.2%	Free
4810.99.30	0.8%	0.4%	Free
4810.99.65	1.1%	0.6%	Free
4811.10.20	1.1%	0.6%	Free
4811.41.10	1.2%	0.6%	Free
4811.41.20	1.2%	0.6%	Free
4811.41.30	1.1%	0.5%	Free
4811.49.20	0.6%	0.3%	Free

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HTS Subheading	Year 1	2003	2004
4811.49.30	1.1%	0.5%	Free
4811.51.40	0.5%	0.3%	Free
4811.51.60	1.1%	0.5%	Free
4811.59.20	0.5%	0.2%	Free
4811.59.60	1.1%	0.5%	Free
4811.60.40	0.7%	0.3%	Free
4811.60.60	1.1%	0.5%	Free
4811.90.10	0.8%	0.4%	Free
4811.90.20	0.7%	0.3%	Free
4811.90.40	0.6%	0.3%	Free
4811.90.80	0.4%	0.2%	Free
4811.90.90	1.1%	0.5%	Free
4823.12.00	1.2%	0.6%	Free
4823.19.01	0.6%	0.3%	Free
4823.90.31	0.8%	0.4%	Free
4823.90.66	1.1%	0.6%	Free
4823.90.86	1.1%	0.5%	Free
5105.31.00	7¢/kg + 5.6%	6.9¢/kg + 5.6%	6.8¢/kg + 5.5%
5105.39.00	7¢/kg + 5.6%	6.9¢/kg + 5.6%	6.8¢/kg + 5.5%
5308.90.10	3.2%	3%	2.7%
5308.90.90	0.8%	0.4%	Free
5607.90.35	4.1%	3.7%	3.4%
5607.90.90	6.5%	6.4%	6.3%
5904.90.10	1%	0.5%	Free
5904.90.90	1%	0.5%	Free
6002.40.40	9%	8.9%	8.8%
6002.40.80	8.3%	8.1%	8%
6002.90.40	9%	8.9%	8.8%
6002.90.80	8.3%	8.1%	8%
6003.10.10	14.5%	14.3%	14.1%
6003.10.90	6.8%	6.7%	6.6%
6003.20.10	14.5%	14.3%	14.1%
6003.20.30	8.4%	8.2%	8%
6003.30.10	14.5%	14.3%	14.1%
6003.30.60	7.8%	7.7%	7.6%
6003.40.10	14.5%	14.3%	14.1%
6003.40.60	7.8%	7.7%	7.6%

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HTS Subheading	Year 1	2003	2004
6003.90.10	14.5%	14.3%	14.1%
6003.90.90	6.8%	6.7%	6.6%
6004.10.00	12.6%	12.5%	12.3%
6004.90.20	12.6%	12.5%	12.3%
6004.90.90	7.2%	7.1%	7%
6005.10.00	11.8%	10.9%	10%
6005.21.00	10.8%	10.4%	10%
6005.22.00	10.8%	10.4%	10%
6005.23.00	10.8%	10.4%	10%
6005.24.00	10.8%	10.4%	10%
6005.31.00	10.8%	10.4%	10%
6005.32.00	10.8%	10.4%	10%
6005.33.00	10.8%	10.4%	10%
6005.34.00	10.8%	10.4%	10%
6005.41.00	10.8%	10.4%	10%
6005.42.00	10.8%	10.4%	10%
6005.43.00	10.8%	10.4%	10%
6005.44.00	10.8%	10.4%	10%
6005.90.00	10.8%	10.4%	10%
6006.10.00	11.8%	10.9%	10%
6006.21.10	10.8%	10.4%	10%
6006.21.90	10.8%	10.4%	10%
6006.22.10	10.8%	10.4%	10%
6006.22.90	10.8%	10.4%	10%
6006.23.10	10.8%	10.4%	10%
6006.23.90	10.8%	10.4%	10%
6006.24.10	10.8%	10.4%	10%
6006.24.90	10.8%	10.4%	10%
6006.31.00	10.8%	10.4%	10%
6006.32.00	10.8%	10.4%	10%
6006.33.00	10.8%	10.4%	10%
6006.34.00	10.8%	10.4%	10%
6006.41.00	10.8%	10.4%	10%
6006.42.00	10.8%	10.4%	10%
6006.43.00	10.8%	10.4%	10%
6006.44.00	10.8%	10.4%	10%
6006.90.10	8.4%	7.7%	7%

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HTS Subheading	Year 1	2003	2004
6006.90.90	2.8%	1.4%	Free
6110.11.00	16.2%	16.1%	16%
6110.12.10	4.7%	4.4%	4%
6110.12.20	16.2%	16.1%	16%
6110.19.00	16.2%	16.1%	16%
7302.90.10	0.2%	0.1%	Free
7302.90.90	1.1%	0.6%	Free

Annex III (continued)
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(B). Staged rate reductions of the rates of duty in the Rates of Duty 1-Special subcolumn, effective with respect to goods of Mexico, under the terms of general note 12 to the tariff schedule, entered, or withdrawn from warehouse for consumption, on or after the dates listed below.

For each of the following provisions, the Rates of Duty 1-Special subcolumn is modified by:

(i) deleting the rate of duty followed by the symbol "MX" in parentheses in such subcolumn and inserting in such subcolumn, on the later of (a) January 1, 2002, or (b) the fifteenth day after the date of publication of this proclamation in the Federal Register, the rate of duty specified for such provision in the "Year 1" column in the table below in lieu thereof, and

(ii) on January 1 for each of the subsequent dated columns the rates of duty followed by the symbol "MX" in parentheses in the Rates of Duty 1-Special subcolumn are deleted and the following rates of duty are inserted in such provisions in lieu thereof on the date specified.

HTS Subheading	Year 1	2003	2004	2005	2006	2007	2008
0709.51.01	0.8¢/kg + 1.8%	Free	Free	Free	Free	Free	Free
0709.59.00	0.8¢/kg + 1.8%	Free	Free	Free	Free	Free	Free
0714.90.05	1.8%	Free	Free	Free	Free	Free	Free
0805.50.20	0.2¢/kg	Free	Free	Free	Free	Free	Free
0805.50.40	0.2¢/kg	Free	Free	Free	Free	Free	Free
2003.10.01	0.7¢/kg on drained weight + 1%	Free	Free	Free	Free	Free	Free
2003.90.00	0.7¢/kg on drained weight + 1%	Free	Free	Free	Free	Free	Free
2004.90.85	1.7%	Free	Free	Free	Free	Free	Free
2008.30.66	1.7%	Free	Free	Free	Free	Free	Free
2008.70.10	2%	Free	Free	Free	Free	Free	Free
2008.70.20	1.5%	Free	Free	Free	Free	Free	Free
2008.99.70	1.7%	Free	Free	Free	Free	Free	Free
2009.12.25	2.12¢/liter	1.767¢/liter	1.413¢/liter	1.06¢/liter	0.707¢/liter	0.353¢/liter	Free
2009.12.45	3.7¢/liter	3¢/liter	2.4¢/liter	1.8¢/liter	1.2¢/liter	0.6¢/liter	Free
2009.19.00	3.7¢/liter	3¢/liter	2.4¢/liter	1.8¢/liter	1.2¢/liter	0.6¢/liter	Free
2009.21.20	0.5¢/liter	Free	Free	Free	Free	Free	Free
2009.21.40	0.9¢/liter	Free	Free	Free	Free	Free	Free

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HTS Subheading	Year 1	2003	2004	2005	2006	2007	2008
2009.29.00	0.9¢/liter	Free	Free	Free	Free	Free	Free
2009.31.40	0.5¢/liter	Free	Free	Free	Free	Free	Free
2009.31.60	0.9¢/liter	Free	Free	Free	Free	Free	Free
2009.39.60	0.9¢/liter	Free	Free	Free	Free	Free	Free
2009.41.20	0.5¢/liter	Free	Free	Free	Free	Free	Free
2009.49.20	0.5¢/liter	Free	Free	Free	Free	Free	Free
2009.61.00	0.6¢/liter	Free	Free	Free	Free	Free	Free
2009.69.00	0.6¢/liter	Free	Free	Free	Free	Free	Free
2710.11.90	0.7%	Free	Free	Free	Free	Free	Free
2710.19.90	0.7%	Free	Free	Free	Free	Free	Free
2710.99.90	0.7%	Free	Free	Free	Free	Free	Free
2907.29.05	0.7%	Free	Free	Free	Free	Free	Free
2922.39.45	0.3¢/kg + 1.5%	Free	Free	Free	Free	Free	Free
2924.23.10	0.3¢/kg + 1.8%	Free	Free	Free	Free	Free	Free
2925.19.42	1.5%	Free	Free	Free	Free	Free	Free
3817.00.10	0.1¢/kg + 1.7%	Free	Free	Free	Free	Free	Free
4010.35.50	0.2%	Free	Free	Free	Free	Free	Free
4010.36.50	0.2%	Free	Free	Free	Free	Free	Free
4010.39.50	0.2%	Free	Free	Free	Free	Free	Free
4101.20.30	0.3%	Free	Free	Free	Free	Free	Free
4101.50.30	0.3%	Free	Free	Free	Free	Free	Free
4104.11.20	0.3%	Free	Free	Free	Free	Free	Free
4104.19.20	0.3%	Free	Free	Free	Free	Free	Free
4104.41.20	0.3%	Free	Free	Free	Free	Free	Free
4104.49.20	0.3%	Free	Free	Free	Free	Free	Free
4107.11.20	0.3%	Free	Free	Free	Free	Free	Free
4107.11.30	0.5%	Free	Free	Free	Free	Free	Free
4107.12.20	0.3%	Free	Free	Free	Free	Free	Free
4107.12.30	0.5%	Free	Free	Free	Free	Free	Free
4107.19.20	0.3%	Free	Free	Free	Free	Free	Free
4107.19.30	0.5%	Free	Free	Free	Free	Free	Free
4114.20.30	0.3%	Free	Free	Free	Free	Free	Free
4114.20.40	0.5%	Free	Free	Free	Free	Free	Free
6110.11.00	1.7%	Free	Free	Free	Free	Free	Free

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HTS Subheading	Year 1	2003	2004	2005	2006	2007	2008
6110.12.10	0.7%	Free	Free	Free	Free	Free	Free
6110.12.20	1.7%	Free	Free	Free	Free	Free	Free
6110.19.00	1.7%	Free	Free	Free	Free	Free	Free

Annex III (continued)
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(C). Staged rate reductions of the rates of duty in the Rates of Duty 1-Special subcolumn, effective with respect to goods of Mexico, under the terms of general note 12 to the tariff schedule, and products of countries designated as beneficiary countries under the United States-Caribbean Basin Trade Partnership Act of 2002, entered, or withdrawn from warehouse for consumption, on or after the dates listed below.

For each of the following provisions, the Rates of Duty 1-Special subcolumn is modified by:

(i) deleting the rate of duty followed by the symbol "MX,R" in parentheses in such subcolumn and inserting in such subcolumn, on the later of (a) January 1, 2002, or (b) the fifteenth day after the date of publication of this proclamation in the Federal Register, the rate of duty specified for such provision in the "Year 1" column in the table below in lieu thereof, and

(ii) on January 1 for each of the subsequent dated columns the rates of duty followed by the symbol "MX,R" in parentheses in the Rates of Duty 1-Special subcolumn are deleted and the following rates of duty are inserted in such provisions in lieu thereof on the date specified.

HTS Subheading	Year 1	2003
2710.11.15	5.2¢/bbl	Free
2710.11.18	5.2¢/bbl	Free
2710.11.25	1¢/bbl	Free
2710.11.45	1¢/bbl	Free
2710.19.05	0.5¢/bbl	Free
2710.19.10	1¢/bbl	Free
2710.19.15	5.2¢/bbl	Free
2710.19.21	5.2¢/bbl	Free
2710.19.22	5.2¢/bbl	Free
2710.19.23	1¢/bbl	Free
2710.19.30	8.4¢/bbl	Free
2710.19.45	1¢/bbl	Free
2710.91.00	1¢/bbl	Free
2710.99.05	0.5¢/bbl	Free
2710.99.10	1¢/bbl	Free
2710.99.16	5.2¢/bbl	Free
2710.99.21	1¢/bbl	Free
2710.99.31	8.4¢/bbl	Free
2710.99.45	1¢/bbl	Free

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(D). Staged rate reductions of the rates of duty in the Rates of Duty 1-Special subcolumn, effective with respect to goods of Jordan, under the terms of general note 18 to the tariff schedule, entered, or withdrawn from warehouse for consumption, on or after the dates listed below.

1. For each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the parenthetical "(JO)" and the rate preceding such parenthetical and by inserting "JO", in alphabetical order, in the parentheses following the "Free" rate of duty such subcolumn on the later of (a) January 1, 2002, or (b) the fifteenth day after the date of publication of this proclamation in the Federal Register.

0709.90.91	0810.90.45	4418.90.45	8461.90.30
0710.90.11	2001.90.38	4421.90.97	8461.90.60
0710.90.91	2004.90.85	8415.81.01	
0711.90.65	3402.20.11	8415.82.01	
0805.90.01	3824.90.91	8419.89.95	

2. For each of the following provisions, the Rates of Duty 1-Special subcolumn is modified by:

(i) deleting the rate of duty followed by the symbol "JO" in parentheses in such subcolumn and inserting in such subcolumn, on the later of (a) January 1, 2002, or (b) the fifteenth day after the date of publication of this proclamation in the Federal Register, the rate of duty specified for such provision in the "Year 1" column in the table below in lieu thereof, and

(ii) on January 1 for each of the subsequent dated columns the rates of duty followed by the symbol "JO" in parentheses in the Rates of Duty 1-Special subcolumn are deleted and the following rates of duty are inserted in such provisions in lieu thereof on the date specified.

HTS Subheading	Year 1	2003	2004	2005	2006	2007	2008	2009	2010
0101.90.20	3.4%	1.7%	Free	Free	Free	Free	Free	Free	Free
0208.30.00	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
0208.40.00	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
0208.50.00	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
0208.90.90	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
0712.32.00	4.1%	2%	Free	Free	Free	Free	Free	Free	Free
0712.33.00	4.1%	2%	Free	Free	Free	Free	Free	Free	Free
0712.90.85	4.1%	2%	Free	Free	Free	Free	Free	Free	Free
0714.90.45	3%	1.5%	Free	Free	Free	Free	Free	Free	Free
0714.90.48	4.1%	2%	Free	Free	Free	Free	Free	Free	Free
0714.90.60	4.1%	2%	Free	Free	Free	Free	Free	Free	Free
0805.50.40	0.9¢/kg	0.4¢/kg	Free	Free	Free	Free	Free	Free	Free
1103.19.90	4.5%	2.2%	Free	Free	Free	Free	Free	Free	Free
1106.20.10	4.1%	2%	Free	Free	Free	Free	Free	Free	Free
1212.99.10	62¢/t	31¢/t	Free	Free	Free	Free	Free	Free	Free
1514.11.00	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
1514.19.00	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free

HTS Subheading	Year 1	2003	2004	2005	2006	2007	2008	2009	2010
1514.91.90	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
1514.99.90	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
1904.30.00	8.4%	5.6%	2.8%	Free	Free	Free	Free	Free	Free
1904.90.01	8.4%	5.6%	2.8%	Free	Free	Free	Free	Free	Free
2008.30.66	8.4%	5.6%	2.8%	Free	Free	Free	Free	Free	Free
2008.30.96	8.4%	5.6%	2.8%	Free	Free	Free	Free	Free	Free
2008.70.10	9.6%	6.4%	3.2%	Free	Free	Free	Free	Free	Free
2008.70.20	10.2%	6.8%	3.4%	Free	Free	Free	Free	Free	Free
2009.21.20	2.2¢/liter	1.1¢/liter	Free	Free	Free	Free	Free	Free	Free
2009.21.40	4.7¢/liter	3.1¢/liter	1.5¢/liter	Free	Free	Free	Free	Free	Free
2009.29.00	4.7¢/liter	3.1¢/liter	1.5¢/liter	Free	Free	Free	Free	Free	Free
2009.31.20	0.8¢/liter	0.4¢/liter	Free	Free	Free	Free	Free	Free	Free
2009.31.60	4.7¢/liter	3.1¢/liter	1.5¢/liter	Free	Free	Free	Free	Free	Free
2009.39.20	0.8¢/liter	0.4¢/liter	Free	Free	Free	Free	Free	Free	Free
2009.39.60	4.7¢/liter	3.1¢/liter	1.5¢/liter	Free	Free	Free	Free	Free	Free
2009.41.20	2.5¢/liter	1.6¢/liter	0.8¢/liter	Free	Free	Free	Free	Free	Free
2009.49.20	2.5¢/liter	1.6¢/liter	0.8¢/liter	Free	Free	Free	Free	Free	Free
2620.99.20	8.8¢/kg on tungsten content + 1.9%	4.4¢/kg on tungsten content + 0.9%	Free	Free	Free	Free	Free	Free	Free
2710.11.90	3.5%	1.7%	Free	Free	Free	Free	Free	Free	Free
2710.19.35	2.9%	1.4%	Free	Free	Free	Free	Free	Free	Free
2710.19.40	0.6¢/kg + 2.8%	0.3¢/kg + 1.4%	Free	Free	Free	Free	Free	Free	Free
2710.19.90	3.5%	1.7%	Free	Free	Free	Free	Free	Free	Free

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HTS Subheading	Year 1	2003	2004	2005	2006	2007	2008	2009	2010
2710.99.32	2.9%	1.4%	Free	Free	Free	Free	Free	Free	Free
2710.99.39	0.6¢/kg + 2.8%	0.3¢/kg + 1.4%	Free	Free	Free	Free	Free	Free	Free
2710.99.90	3.5%	1.7%	Free	Free	Free	Free	Free	Free	Free
2805.19.90	2.7%	1.3%	Free	Free	Free	Free	Free	Free	Free
2834.29.05	2.7%	1.3%	Free	Free	Free	Free	Free	Free	Free
2903.19.05	2.5%	1.2%	Free	Free	Free	Free	Free	Free	Free
2905.59.10	2.7%	1.3%	Free	Free	Free	Free	Free	Free	Free
2905.59.90	4.1%	2%	Free	Free	Free	Free	Free	Free	Free
2907.29.05	2.7%	1.3%	Free	Free	Free	Free	Free	Free	Free
2918.19.15	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2921.49.38	6.3%	4.2%	2.1%	Free	Free	Free	Free	Free	Free
2922.19.09	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2922.39.10	2.9%	1.4%	Free	Free	Free	Free	Free	Free	Free
2922.39.14	4.6%	2.3%	Free	Free	Free	Free	Free	Free	Free
2922.39.25	4.6%	2.3%	Free	Free	Free	Free	Free	Free	Free
2922.39.45	0.9¢/kg + 6%	0.6¢/kg + 4%	0.3¢/kg + 2%	Free	Free	Free	Free	Free	Free
2922.39.50	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2922.49.26	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2924.19.80	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2924.23.10	0.9¢/kg + 6.6%	0.6¢/kg + 4.4%	0.3¢/kg + 2.2%	Free	Free	Free	Free	Free	Free
2924.23.70	4.6%	2.3%	Free	Free	Free	Free	Free	Free	Free
2924.23.75	0.9¢/kg + 6.6%	0.6¢/kg + 4.4%	0.3¢/kg + 2.2%	Free	Free	Free	Free	Free	Free

HTS Subheading	Year 1	2003	2004	2005	2006	2007	2008	2009	2010
2924.29.43	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2924.29.71	4.6%	2.3%	Free	Free	Free	Free	Free	Free	Free
2924.29.76	0.9¢/kg + 6.6%	0.6¢/kg + 4.4%	0.3¢/kg + 2.2%	Free	Free	Free	Free	Free	Free
2924.29.95	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2925.19.42	4.9%	2.4%	Free	Free	Free	Free	Free	Free	Free
2926.30.20	4.6%	2.3%	Free	Free	Free	Free	Free	Free	Free
2926.90.43	4.6%	2.3%	Free	Free	Free	Free	Free	Free	Free
2926.90.48	7.1%	4.7%	2.3%	Free	Free	Free	Free	Free	Free
2932.99.61	4.6%	2.3%	Free	Free	Free	Free	Free	Free	Free
2933.39.31	6.3%	4.2%	2.1%	Free	Free	Free	Free	Free	Free
2933.49.08	0.9¢/kg + 6.2%	0.6¢/kg + 4.1%	0.3¢/kg + 2%	Free	Free	Free	Free	Free	Free
2933.49.10	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2933.49.15	2.9%	1.4%	Free	Free	Free	Free	Free	Free	Free
2933.49.20	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2933.49.26	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2933.49.30	4.1%	2%	Free	Free	Free	Free	Free	Free	Free
2933.49.60	4.6%	2.3%	Free	Free	Free	Free	Free	Free	Free
2933.49.70	0.9¢/kg + 6.2%	0.6¢/kg + 4.1%	0.3¢/kg + 2%	Free	Free	Free	Free	Free	Free
2933.59.46	6.3%	4.2%	2.1%	Free	Free	Free	Free	Free	Free
2933.79.08	4.6%	2.3%	Free	Free	Free	Free	Free	Free	Free
2933.79.85	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2933.99.06	4.2%	2.1%	Free	Free	Free	Free	Free	Free	Free
2933.99.13	2.9%	1.4%	Free	Free	Free	Free	Free	Free	Free

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HTS Subheading	Year 1	2003	2004	2005	2006	2007	2008	2009	2010
2933.99.14	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2933.99.17	4.4%	2.2%	Free	Free	Free	Free	Free	Free	Free
2933.99.22	4.6%	2.3%	Free	Free	Free	Free	Free	Free	Free
2933.99.24	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2933.99.26	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2933.99.46	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2933.99.53	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2933.99.55	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2933.99.61	6.3%	4.2%	2.1%	Free	Free	Free	Free	Free	Free
2933.99.65	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2933.99.70	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2933.99.75	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2933.99.79	4.6%	2.3%	Free	Free	Free	Free	Free	Free	Free
2933.99.82	0.9¢/kg + 6.2%	0.6¢/kg + 4.1%	0.3¢/kg + 2%	Free	Free	Free	Free	Free	Free
2933.99.87	3.1%	1.5%	Free	Free	Free	Free	Free	Free	Free
2933.99.97	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2934.99.05	2.9%	1.4%	Free	Free	Free	Free	Free	Free	Free
2934.99.06	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2934.99.08	0.9¢/kg + 6.2%	0.6¢/kg + 4.1%	0.3¢/kg + 2%	Free	Free	Free	Free	Free	Free
2934.99.11	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2934.99.12	4.1%	2%	Free	Free	Free	Free	Free	Free	Free
2934.99.15	4.6%	2.3%	Free	Free	Free	Free	Free	Free	Free
2934.99.16	4.4%	2.2%	Free	Free	Free	Free	Free	Free	Free
2934.99.18	4.1%	2%	Free	Free	Free	Free	Free	Free	Free

HTS Subheading	Year 1	2003	2004	2005	2006	2007	2008	2009	2010
2934.99.20	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2934.99.30	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2934.99.39	4.6%	2.3%	Free	Free	Free	Free	Free	Free	Free
2934.99.44	0.9¢/kg + 6.2%	0.6¢/kg + 4.1%	0.3¢/kg + 2%	Free	Free	Free	Free	Free	Free
2934.99.90	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
2935.00.06	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
3817.00.10	0.2¢/kg + 6.4%	0.1¢/kg + 4.3%	2.1%	Free	Free	Free	Free	Free	Free
3817.00.15	0.2¢/kg + 6.4%	0.1¢/kg + 4.3%	2.1%	Free	Free	Free	Free	Free	Free
3817.00.20	0.7¢/kg + 4.6%	0.3¢/kg + 2.3%	Free	Free	Free	Free	Free	Free	Free
3920.49.00	2.9%	1.4%	Free	Free	Free	Free	Free	Free	Free
4010.35.41	4%	2%	Free	Free	Free	Free	Free	Free	Free
4010.35.45	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
4010.36.41	4%	2%	Free	Free	Free	Free	Free	Free	Free
4010.36.45	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
4010.39.41	4%	2%	Free	Free	Free	Free	Free	Free	Free
4010.39.45	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
4015.19.50	8.4%	5.6%	2.8%	Free	Free	Free	Free	Free	Free
4202.92.05	3.5%	1.7%	Free	Free	Free	Free	Free	Free	Free
4412.13.51	4%	2%	Free	Free	Free	Free	Free	Free	Free
4412.13.91	4%	2%	Free	Free	Free	Free	Free	Free	Free
4412.14.31	4%	2%	Free	Free	Free	Free	Free	Free	Free
4412.14.56	4%	2%	Free	Free	Free	Free	Free	Free	Free

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HTS Subheading	Year 1	2003	2004	2005	2006	2007	2008	2009	2010
4412.22.31	4%	2%	Free	Free	Free	Free	Free	Free	Free
4412.22.41	4%	2%	Free	Free	Free	Free	Free	Free	Free
4412.29.36	4%	2%	Free	Free	Free	Free	Free	Free	Free
4412.29.46	4%	2%	Free	Free	Free	Free	Free	Free	Free
4412.92.41	4%	2%	Free	Free	Free	Free	Free	Free	Free
4412.92.51	2.5%	1.2%	Free	Free	Free	Free	Free	Free	Free
4412.99.46	4%	2%	Free	Free	Free	Free	Free	Free	Free
4412.99.56	2.5%	1.2%	Free	Free	Free	Free	Free	Free	Free
4601.91.20	3.3%	1.6%	Free	Free	Free	Free	Free	Free	Free
5105.31.00	3.6¢/kg + 2.9%	1.8¢/kg + 1.4%	Free	Free	Free	Free	Free	Free	Free
5105.39.00	3.6¢/kg + 2.9%	1.8¢/kg + 1.4%	Free	Free	Free	Free	Free	Free	Free
5607.90.90	3.3%	1.6%	Free	Free	Free	Free	Free	Free	Free
6002.40.40	4.6%	2.3%	Free	Free	Free	Free	Free	Free	Free
6002.40.80	4.2%	2.1%	Free	Free	Free	Free	Free	Free	Free
6002.90.40	4.6%	2.3%	Free	Free	Free	Free	Free	Free	Free
6002.90.80	4.2%	2.1%	Free	Free	Free	Free	Free	Free	Free
6003.10.10	8.9%	5.9%	2.9%	Free	Free	Free	Free	Free	Free
6003.10.90	3.5%	1.7%	Free	Free	Free	Free	Free	Free	Free
6003.20.10	8.9%	5.9%	2.9%	Free	Free	Free	Free	Free	Free
6003.20.30	4.4%	2.2%	Free	Free	Free	Free	Free	Free	Free
6003.30.10	8.9%	5.9%	2.9%	Free	Free	Free	Free	Free	Free
6003.30.60	4%	2%	Free	Free	Free	Free	Free	Free	Free
6003.40.10	8.9%	5.9%	2.9%	Free	Free	Free	Free	Free	Free
6003.40.60	4%	2%	Free	Free	Free	Free	Free	Free	Free

HTS Subheading	Year 1	2003	2004	2005	2006	2007	2008	2009	2010
6003.90.10	8.9%	5.9%	2.9%	Free	Free	Free	Free	Free	Free
6003.90.90	3.5%	1.7%	Free	Free	Free	Free	Free	Free	Free
6004.10.00	7.8%	5.2%	2.6%	Free	Free	Free	Free	Free	Free
6004.90.20	7.8%	5.2%	2.6%	Free	Free	Free	Free	Free	Free
6004.90.90	3.7%	1.8%	Free	Free	Free	Free	Free	Free	Free
6005.10.00	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
6005.21.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6005.22.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6005.23.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6005.24.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6005.31.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6005.32.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6005.33.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6005.34.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6005.41.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6005.42.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6005.43.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6005.44.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6005.90.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6006.10.00	8.1%	5.4%	2.7%	Free	Free	Free	Free	Free	Free
6006.21.10	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6006.21.90	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6006.22.10	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6006.22.90	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6006.23.10	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free

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HTS Subheading	Year 1	2003	2004	2005	2006	2007	2008	2009	2010
6006.23.90	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6006.24.10	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6006.24.90	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6006.31.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6006.32.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6006.33.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6006.34.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6006.41.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6006.42.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6006.43.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6006.44.00	6.9%	4.6%	2.3%	Free	Free	Free	Free	Free	Free
6006.90.10	4.9%	2.4%	Free	Free	Free	Free	Free	Free	Free
6110.11.00	9.8%	6.5%	3.2%	Free	Free	Free	Free	Free	Free
6110.12.10	2.7%	1.3%	Free	Free	Free	Free	Free	Free	Free
6110.12.20	9.8%	6.5%	3.2%	Free	Free	Free	Free	Free	Free
6110.19.00	9.8%	6.5%	3.2%	Free	Free	Free	Free	Free	Free
7010.90.30	2.6%	1.3%	Free	Free	Free	Free	Free	Free	Free
8101.94.00	3.3%	1.6%	Free	Free	Free	Free	Free	Free	Free
8101.95.00	3.2%	1.6%	Free	Free	Free	Free	Free	Free	Free
8102.95.30	3.3%	1.6%	Free	Free	Free	Free	Free	Free	Free
8102.95.60	3.3%	1.6%	Free	Free	Free	Free	Free	Free	Free
8108.20.00	9%	6%	3%	Free	Free	Free	Free	Free	Free
8112.12.00	4.2%	2.1%	Free	Free	Free	Free	Free	Free	Free
9108.90.50	$1.296 each	86.4¢ each	43.2¢ each	Free	Free	Free	Free	Free	Free
9108.90.60	$1.44 each	$1.26 each	$1.08 each	90¢ each	72¢ each	54¢ each	36¢ each	18¢ each	Free

HTS Subheading	Year 1	2003	2004	2005	2006	2007	2008	2009	2010
9108.90.80	$1.152 each	$1.008 each	86.4¢ each	72¢ each	57.6¢ each	43.2¢ each	28.8¢ each	14.4¢ each	Free
9108.90.90	75¢ each	37.5¢ each	Free	Free	Free	Free	Free	Free	Free
9112.20.80	2.7%	1.3%	Free	Free	Free	Free	Free	Free	Free
9301.90.30	2.8% on the value of the rifle + 12% on the value of the telescopic sight, if any	1.8% on the value of the rifle + 8% on the value of the telescopic sight, if any	0.9% on the value of the rifle + 4% on the value of the telescopic sight, if any	Free	Free	Free	Free	Free	Free
9613.80.60	4%	2%	Free	Free	Free	Free	Free	Free	Free
9613.80.80	4.5%	2.2%	Free	Free	Free	Free	Free	Free	Free

Annex IV

Modifications to the Harmonized Tariff Schedule of the United States (HTS)

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2002.

For each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the parenthetical "(MX,R)" and the rate preceding such parenthetical and by inserting "MX" and "R", in alphabetical order, in the parentheses following the "Free" rate of duty such subcolumn.

6402.30.90	6404.19.15	6404.19.70	6406.10.10
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6402.91.70	6404.19.30	6404.20.20	6406.10.45
6402.99.60	6404.19.35	6404.20.40	
6402.99.70	6404.19.50	6404.20.60	
6404.11.20	6404.19.60	6406.10.05	

[FR Doc. 01–31522
Filed 12–19–01; 8:45 am]
Billing code 3190–01–C

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 26, 2001

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities
Halosulfuron-methyl; published 12-26-01
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
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Kentucky; published 12-26-01

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Federal Aviation Administration
Airworthiness directives:
Agusta S.p.A.; published 12-10-01
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New markets tax credt; published 12-26-01

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California; comments due by 1-3-02; published 12-19-01 [FR 01-31321]

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Food Safety and Inspection Service
Pizza identity standards; elimination; comments due by 1-2-02; published 11-2-01 [FR 01-27542]

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Air pollution control; new motor vehicles and engines:
Nonroad compression-ignition engines, new and in-use; emissions control—
Diesel emissions standards; Staff Technical Paper availability; comments due by 1-4-02; published 11-20-01 [FR 01-28856]

ENVIRONMENTAL PROTECTION AGENCY
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Fuels and fuel additives—
Composition of additives certified under Gasoline Deposit Control Program; variability requirements revisions; comments due by 1-4-02; published 11-5-01 [FR 01-27588]

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Composition of additives certified under Gasoline Deposit Control Program; variability requirements revisions; comments due by 1-4-02; published 11-5-01 [FR 01-27589]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current

session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

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H.R. 717/P.L. 107–84
Muscular Dystrophy Community Assistance, Research and Education Amendments of 2001 (Dec. 18, 2001; 115 Stat. 823)

H.R. 1766/P.L. 107–85
To designate the facility of the United States Postal Service located at 4270 John Marr Drive in Annandale, Virginia, as the "Stan Parris Post Office Building". (Dec. 18, 2001; 115 Stat. 831)

H.R. 2261/P.L. 107–86
To designate the facility of the United States Postal Service located at 2853 Candler Road in Decatur, Georgia, as the "Earl T. Shinhoster Post Office". (Dec. 18, 2001; 115 Stat. 832)

H.R. 2299/P.L. 107–87
Department of Transportation and Related Agencies Appropriations Act, 2002 (Dec. 18, 2001; 115 Stat. 833; 42 pages)

H.R. 2454/P.L. 107–88

To redesignate the facility of the United States Postal Service located at 5472 Crenshaw Boulevard in Los Angeles, California, as the "Congressman Julian C. Dixon Post Office". (Dec. 18, 2001; 115 Stat. 875)

H.J. Res. 71/P.L. 107–89

Amending title 36, United States Code, to designate September 11 as Patriot Day. (Dec. 18, 2001; 115 Stat. 876)

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1, 2 (2 Reserved)	(869–044–00001–6)	6.50	[4]Jan. 1. 2001
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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 January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

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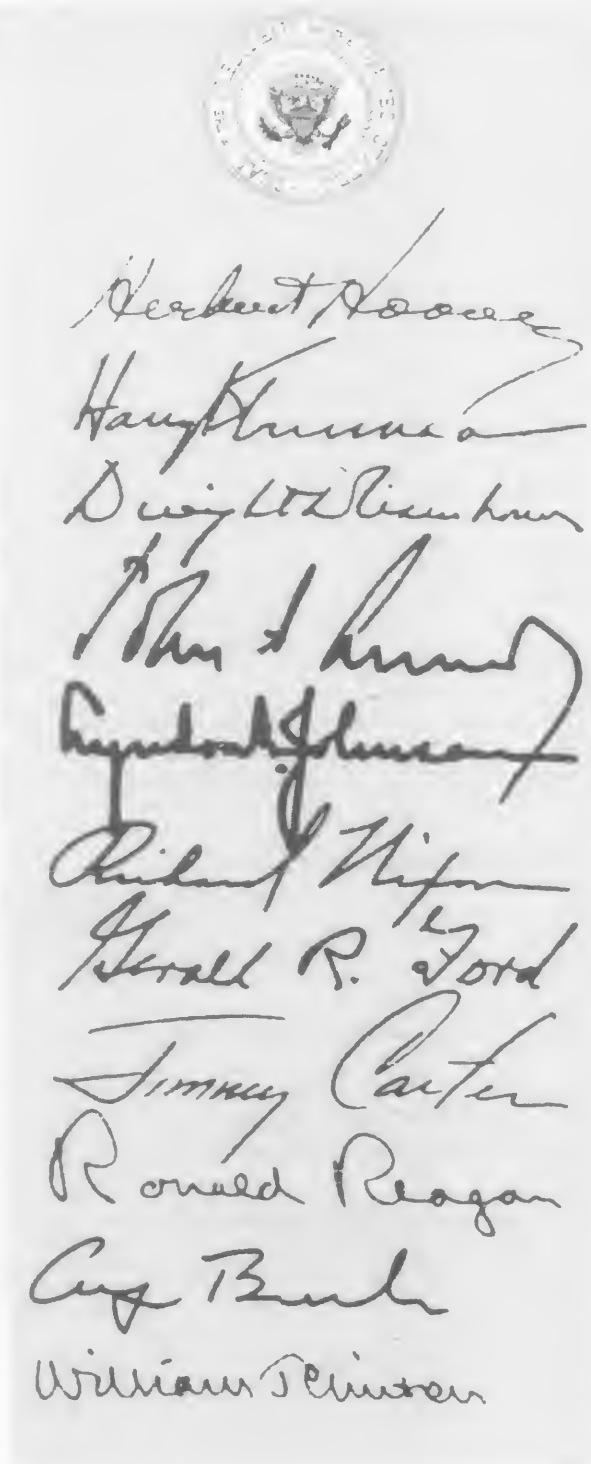

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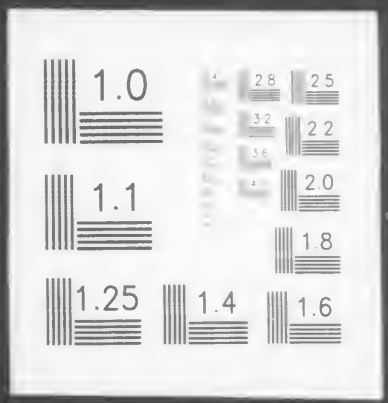
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