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Briefings on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Two Sessions]

WHEN:	January 9, 1996 at 9:00 am and January 23, 1996 at 9:00 am
WHERE:	Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS:	202–523–4538

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Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called ''Reminders''. The Reminders will have two sections: ''Rules Going Into Effect Today'' and ''Comments Due Next Week''. Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect ''today''. Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 60, No. 241
Friday, December 15, 1995

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Chapter VII

Commodity Credit Corporation

7 CFR Chapter XIV

RIN 0560–AE49

Agency Name Change

AGENCIES: Farm Service Agency and Commodity Credit Corporation.

ACTION: Final rule.

SUMMARY: This document amends the regulations to change the name of the Consolidated Farm Service Agency to the Farm Service Agency as a result of the Department of Agriculture reorganization.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Linda A. Turner, Farm Service Agency, P.O. Box 2415, room 1501–S, Washington, DC 20013, telephone 202–690–1855.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Agriculture announced that the agency previously referred to as the Consolidated Farm Service Agency (CFSA) is to be named the Farm Service Agency (FSA). On November 8, 1995, USDA published in the Federal Register (60 FR 56392) a final rule which contained redelegations of authority for the Department of Agriculture and changed the name of CFSA to FSA. This rule includes amendments to 7 CFR chapters VII and XIV which are necessary to bring agency regulations into alignment with the departmental reorganization.

Accordingly, 7 CFR Chapters VII and XIV are amended as follows:

1. The heading of 7 CFR chapter VII is revised to read as follows:

CHAPTER VII—FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

2. In 7 CFR chapters VII and XIV, all references to ''Consolidated Farm Service Agency'' are revised to read ''Farm Service Agency'', and all references to ''CFSA'' are revised to read ''FSA''.

Signed at Washington, DC on December 8, 1995.

Bruce R. Weber,

Acting Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–30534 Filed 12–14–95; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 1280

[No. LS–95–008]

Sheep Promotion, Research, and Information Program: Procedures for the Conduct of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; referendum order.

SUMMARY: The Sheep Promotion, Research, and Information Act of 1994 (Act) authorizes a program of promotion, research, and information to be developed through the promulgation of the Sheep and Wool Promotion, Research, Education, and Information Order (Order). The U.S. Department of Agriculture (Department) recently completed this process and issued an Order which will become effective if approved by sheep producers, sheep feeders, and importers of sheep and sheep products. Importers who only import raw wool are not eligible to participate in the referendum. This rule sets forth the procedures for conducting the initial referendum and the relevant referendum dates.

DATES: *Effective Date:* This final rule is effective December 15, 1995.

Referendum Dates: In-person voting in the referendum will be on February 6, 1996, at the county Cooperative Extension Service offices. Absentee ballots will be available at those offices from January 16, 1996, through January 26, 1996. The representative period to establish voter eligibility will be the period from January 1, 1994, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456, telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Proposed Rule—Sheep Promotion and Research Program: Procedures for Conduct of Referendum published August 8, 1995 (60 FR 40313).

Regulatory Impact Analysis

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

This final 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).

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law, and request a modification of the Order or an exemption from certain provisions or obligations of the Order. The petitioner will have the opportunity for a hearing on the petition. Thereafter the Secretary will issue a decision on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review a ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's decision. The petitioner must exhaust his or her administrative remedies before he or she can initiate any such proceeding in the district court.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), the Administrator of AMS has considered the economic impact of this final action on small entities.

According to the January 27, 1995, issue of ''Sheep and Goats,'' published

by the Department's National Agricultural Statistics Service, there are approximately 87,350 operations with sheep in the United States that may be eligible to vote in the referendum. To obtain the estimated number of importers of sheep and sheep products who would be subject to an assessment and who may be eligible to vote in the referendum, the Department consulted with major importer organizations whose members import sheep and sheep products into the United States. Based on its consultations with these organizations, the Department estimates that the number of importers of sheep and sheep products in the United States who would be subject to these rules and regulations is approximately 9,000. Nearly all of the sheep operations in the United States and nearly all of the importers of sheep and sheep products would be classified as small entities by the Small Business Administration (13 CFR 121.601).

This action has also been reviewed under RFA (5 U.S.C. 601 *et seq.*). This final rule would establish procedures for the conduct of a referendum to determine whether an Order promulgated under the Act becomes operational. Such procedures would permit all eligible sheep producers, sheep feeders, and importers of sheep and sheep products, excluding importers who import only raw wool, who have been engaged in sheep production, sheep feeding, or the importation of sheep and sheep products to vote in the referendum. Participation in the referendum is voluntary. Votes may be cast either by mail ballots or in person at polling places. Casting votes by mail or in person would not impose a significant economic burden on participants. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), OMB has approved the information collection requirements contained in this final rule. The control number assigned to the information collection requirements in Part 1280 by OMB pursuant to the Paperwork Reduction Act is OMB 0581–0093. The information collection required by this action and necessary to conduct a referendum includes the following:

(a) For in-person voting:

(1) Each sheep producer, sheep feeder, or importer of sheep and sheep products, except an importer who imports only raw wool, who votes in person in the referendum must sign the In-Person Voter Registration List (Form LS–61–3) and complete a Ballot (Form LS–61) at the county Cooperative Extension Service (CES) office of the Department. The voter must complete the ballot and insert it into the SHEEP BALLOT envelope (Form LS–61–1).

(2) Each producer, feeder, and importer must complete the Registration and Certification Form that is printed on the SHEEP REFERENDUM envelope (Form LS–61–2) and insert the SHEEP BALLOT envelope with the enclosed ballot in the SHEEP REFERENDUM envelope (Form LS–61–2). The estimated average time burden for completing the forms for in-person voting is 6 minutes per voter.

(b) For absentee voting: Each sheep producer, sheep feeder, and importer of sheep and sheep products, except an importer who imports only raw wool, who wants to cast an absentee vote instead of an in-person vote, must complete, in a legible manner, a combined registration/certification and absentee ballot form (Form LS–62). The voting producer, feeder, or importer must complete the registration/certification and absentee ballot form (Form LS–62), remove the ballot portion of the form, insert the ballot in a SHEEP BALLOT envelope (Form LS–61–1)(same as for in-person voting) and then insert the sealed SHEEP BALLOT envelope and the registration/certification form in the SHEEP REFERENDUM envelope (Form LS–62–1). The estimated average time burden for completing this procedure is 6 minutes per voter.

(c) The final rule requires each sheep producer, sheep feeder, or importer of sheep and sheep products who votes in person to record his or her name on the In-Person Voter Registration List (Form LS–61–3) and, if applicable, the name of the entity he or she represents. The estimated average time burden for registering to vote in person is 0.5 minutes per voter. For absentee voters, the county CES agent shall enter on the Absentee Voter Request List (Form LS–62–2) the date the ballot was requested, the voter's name and address, the name of the represented entity, if any, and the date the ballot was mailed from the county CES office. This information may be used to validate ballots and to challenge potentially-ineligible voters. Each county CES agent will fill out one or more of the Absentee Voter Request Lists (Form LS–62–2) per referendum. Because only county CES agents will complete the Absentee Voter Request List, the estimated average reporting burden would not apply to the producer, feeder, or importer voting in the referendum.

Based on previous referendums conducted under the National Wool Act of 1954, the estimated number of producers, feeders, and importers who will vote in the referendum is 25,000, with each voting once.

Background

The Act (7 U.S.C. 7101–7111) provides for the establishment of a coordinated program of promotion, research, education, consumer information, industry information, and producer information designed to strengthen the sheep industry's position in the marketplace, maintain and expand existing markets, and develop new markets and uses for sheep and sheep products.

The program will be funded by a mandatory assessment on domestic producers, feeders, and exporters of live sheep and greasy wool of 1-cent-per-pound on live sheep sold and 2-cents-per-pound on greasy wool sold. Importers will be assessed 1-cent-per-pound on live sheep, the equivalent of 1-cent-per-pound of live sheep for sheep products as well as 2-cents-per-pound of degreased wool or the equivalent of degreased wool for wool and wool products. Imported raw wool would be exempt from assessments. Each person who processes or causes to be processed sheep and sheep products of that person's own production, and who markets the processed products, would be assessed the equivalent of 1-cent-per-pound of live sheep sold or 2-cents-per-pound of greasy wool sold. All assessments may be adjusted in accordance with the applicable provisions of the Act.

The Act requires that a referendum be conducted after the issuance of the final Order to determine whether the Order will go into effect. The referendum would be conducted among persons who were sheep producers, sheep feeders, or importers of sheep and sheep products, during a representative period specified by the Secretary. Importers who import only raw wool are not eligible to participate in the referendum because raw wool is exempt from assessments under the Act. The Order would become operational only if it is approved by a majority of the producers, feeders, and importers voting in the referendum or by producers, feeders, and importers voting in the referendum who account for at least two-thirds of the production represented by persons voting in the referendum. If the Order is not approved by persons voting in the referendum, the program will not become operational. An Order was

published in the Federal Register on December 5, 1995 (60 FR 62298).

To vote in the referendum, eligible persons will complete the registration and certification form, mark their ballots and record their volume of production on the ballot if the volume of production is voted. The volume of production will be recorded as the number of live domestic sheep or live sheep equivalents that a person owned or imported during the representative period. The domestic volume of production includes the largest number of head of domestic sheep owned for any single consecutive 30-day period during the representative period. The number of live sheep equivalents for imported sheep products will be calculated based on the amount of such products imported during the representative period. Producers, feeders, and importers who also cast ballots based on volume of production must determine their volume of production before they register and vote in the referendum.

The Act specifies that the Secretary shall determine a method of allocating, by a pro rata percentage of annual projected or actual assessments from importers, the volume of production represented by importers in a referendum conducted pursuant to this subpart. Because an Order implementing the provisions of the Act has not been in effect, imported sheep and sheep products have not been subject to the assessments described in the proposed Order published June 2, 1995 (60 FR 28747). Consequently, there are no projected or actual annual assessments available to use in calculating the volume of production for importers during the representative period. In the absence of that information on annual assessments, the Department has decided that importers of sheep and sheep products will determine their volume of production by converting the volume of those imported products that would have been subject to assessment if an Order had been in effect during the representative period. Imported sheep, sheep meat, and wool and wool products that would have been subject to assessment during the representative period are identified by the Harmonized Tariff Schedule (HTS) classification numbers listed in Table 1—HTS Classification Numbers and Conversion Factors for Imported Sheep and Sheep Products—contained herein, which includes sheep, sheep meat, and wool and wool products. Because the Act exempts imported raw wool from assessments, HTS numbers and corresponding conversion factors are not included for imported raw wool. For the purpose of the initial referendum, importers will use the 1994 HTS classification numbers and conversion factors in Table 1. These HTS numbers for imported sheep and sheep products are published in the Harmonized Tariff Schedule of the United States. To enable importers to convert sheep meat and wool and wool products identified by the HTS numbers for 1994 listed in Table 1, the Department will use the conversion factors listed in the same table that correspond to each listed HTS number. The Department's Economic Research Service (ERS) has developed these conversion factors and maintains them in an import library. For sheep meat, these conversion factors take into account removal of bone, weight loss in processing or cooking, and nonsheep components of the sheep products. The conversion factors for wool products are used to determine the raw fiber content of imported wool products, and take into account fiber loss during processing, fabric trim loss, and cutting loss for wool and other nonsheep components of wool and wool products.

Factors in determining the number of live sheep equivalents include (1) the weight of the imported sheep meat, the weight of imported wool and wool products and the corresponding conversion factors, (2) the average carcass weight of 57 pounds for domestic mature sheep as published by the Department's National Agricultural Statistics Service in the March 1995 edition of the 1994 Livestock Slaughter Summary, (3) a dressing percentage of 50 percent, and (4) an equivalent live weight of 114 pounds for domestic mature sheep (57 lbs. ÷ 50% = 114 lbs.). The dressing percentage of 50 percent is widely recognized as the average dressing percentage for sheep in the United States. The formula for calculating importer volume of production for imported wool and wool products will use the listed conversion factors and a degreased wool yield of 52.8 percent, as published by ERS in the 1992 Weight, Measures, and Conversion Factors for Agricultural Commodities and Their Products, to convert degreased wool to a greasy wool basis. In the absence of official data for carcass weights, live weights, dressing percentages and wool yield percentages of sheep from importing countries, the Department has determined that the initially proposed carcass weight, the dressing percentage, the live weight, and the percentage of degreased wool yield, on the average, would be most representative of carcass weights, dressing percentages, live weights and degreased wool yield percentages of sheep from which imported sheep products are derived.

Imported live sheep require no conversion and each head of imported live sheep will be counted in determining the total volume of production for importers.

The calculation procedures for both imported sheep meat and imported wool and wool products are as follows:

Imported Sheep Meat

To calculate the live sheep equivalents of imported sheep meat, an importer would first multiply the total weight of imported sheep meat for each applicable HTS number by the corresponding conversion factor to determine the total carcass weight equivalent. The importer would then divide the total carcass weight equivalent by the average carcass weight of 57 pounds to determine the equivalent number of live sheep. Because the carcass weight of 57 pounds represents the equivalent live weight of 114 pounds (57 lbs. ÷ 50% = 114 lbs.), it is not necessary to convert the carcass weight to a live weight equivalent. The Department has determined that the number of live sheep equivalents should be rounded to the nearest whole number. If the decimal is 0.5 or greater, the number of head of sheep would be rounded upward (i.e., 7.5 = 8.0). If the decimal is less than 0.5, the number of head of sheep would be rounded downward (i.e., 7.49 = 7.0). The following examples illustrate two typical calculations:

Examples I and II

1. Sheep Meat (Bone-in)
HTS 0204100000, Carcasses and half carcasses of lamb, fresh or chilled
Assume: Company X imports 1,000 pounds of bone-in sheep meat
Conversion factor: 1.00
Average carcass weight: 57 pounds
Calculation:

Pounds of sheep meat	1,000 lbs.
Conversion factor	× 1.00
Pounds of carcass weight equivalents.	1,000 lbs.
Average carcass weight	÷ 57 lbs.
Live sheep equivalents	= 17.5 or 18

2. Sheep Meat (Boneless)
HTS 0204232000, Other meat of sheep, fresh or chilled: Boneless: lamb
Assume: Company X imports 1,000 pounds of boneless sheep meat
Conversion factor: 1.52
Average carcass weight: 57 pounds
Calculation:

Pounds of sheep meat	1,000 lbs.
Conversion factor	× 1.52

Pounds of carcass weight equivalents.	1,520 lbs.
Average carcass weight	÷57
Live sheep equivalents	= 26.7 or 27

Imported Wool and Wool Products

Because assessments of all imported products are based on weight and the referendum vote will include a volume consideration which, for domestic voters, will be based on live sheep, the Department has determined that the 114 pounds of mature sheep weight will be the live sheep equivalent for both imported sheep meat and imported wool. For purposes of the referendum, the domestic vote is based entirely on the number of live sheep with no regard for the wool. However, to provide an equitable voting basis for importers of wool and wool products, an amount of greasy wool equal in weight to a live mature sheep—114 pounds—was established as a —live sheep equivalent— for importers of wool and wool products.

To calculate the number of live sheep equivalents of imported wool products, the importer would first multiply the total weight of imported wool products for each applicable HTS number by the corresponding conversion factor to determine the total weight of degreased wool. The importer would then divide the total weight of the degreased wool equivalent by 52.8 percent, to convert the degreased wool to a greasy wool basis. Finally, the importer would divide the total pounds of greasy wool by the calculated average live weight of 114 pounds to determine the number of live sheep equivalents. The Department has determined that the number of live sheep equivalents should be rounded to the nearest whole number. If the decimal is 0.5 or greater, the number of head of sheep would be rounded upward (i.e., 7.5=8.0). If the decimal is less than 0.5, the number of head of sheep would be rounded downward (i.e., 7.49=7.0). The following example illustrates a typical calculation:

Example III

HTS 6201110010, Mens or boys overcoats of wool or fine animal hair

Assume: Company X imports 1,000 overcoats weighing 2,000 pounds into the United States.

Conversion factor: 0.9774

Calculation:

Weight of imported product ..	2,000 lbs.
Conversion factor	×0.9774
Pounds of greasy wool	1,954.8 lbs.
Degreased wool yield	÷52.8%
Pounds of degreased wool	3,702.3 lbs.
Equivalent live weight	÷114 lbs.
Number of live sheep equivalents.	=32.5 or 33

The HTS numbers, the conversion factors, and other information used to calculate number of live sheep equivalents apply only to the initial referendum described herein.

The 1994 HTS classification numbers and conversion factors for imported sheep and sheep products and wool and wool products that importers will use in determining their volume of production are as follows:

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS

HTS	CF
Live Sheep:	
0104100000	1.00
Sheep Meat:	
0204100000	1.00
0204210000	1.00
0204222000	1.00
0204224000	1.00
0204232000	1.52
0204234000	1.52
0204300000	1.00
0204410000	1.00
0204422000	1.00
0204424000	1.00
0204432000	1.52
0204434000	1.52
Wool and Wool Products	
5007106030	0.5315
5007906030	0.5315
5103100000	1.0417
5103200000	1.0417
5105100000	1.0309
5105210000	1.1111
5105290000	1.1111
5106100010	1.0417
5106100090	1.0417
5106200000	0.5208
5107100000	1.0417
5107200000	0.5208
5109102000	1.0417
5109902000	1.0417
5111112000	1.0629
5111113000	1.0629
5111117030	1.0629
5111117060	1.0629
5111191000	1.0629
5111192000	1.0629
5111196020	0.5315
5111196040	0.5315
5111196060	1.0629
5111196080	1.0629
5111200500	0.5315
5111201000	0.5315
5111209000	0.5315
5111300500	0.5315
5111301000	0.5315
5111309000	0.5315
5111903000	0.5315
5111904000	0.7972
5111905000	0.5315
5111906000	0.7972

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
5111909000	0.7972
5112110030	0.5315
5112110060	0.9566
5112111000	0.9566
5112112030	1.0629
5112112060	0.9566
5112192000	1.0629
5112199010	1.0629
5112199020	1.0629
5112199030	1.0629
5112199040	1.0629
5112199050	1.0629
5112199060	1.0629
5112201000	0.5315
5112202000	0.5315
5112203000	0.5315
5112301000	0.5315
5112302000	0.5315
5112303000	0.5315
5112903000	0.6378
5112904000	0.7972
5112905000	0.7972
5112909010	0.5315
5112909090	0.5315
5212111010	0.4783
5212111020	0.4783
5212116010	0.2126
5212121010	0.4783
5212121020	0.4783
5212126010	0.2126
5212131010	0.4783
5212131020	0.4783
5212136010	0.2126
5212141010	0.4783
5212141020	0.4783
5212146010	0.2126
5212151010	0.4783
5212151020	0.4783
5212156010	0.2126
5212211010	0.4783
5212211020	0.4783
5212216010	0.2126
5212221010	0.4783
5212221020	0.4783
5212226010	0.2126
5212231010	0.4783
5212231020	0.4783
5212236010	0.2126
5212241010	0.4783
5212241020	0.4783
5212246010	0.2126
5212251010	0.4783
5212251020	0.4783
5212256010	0.2126
5309212000	0.5315
5309292000	0.5315
5311002000	0.2126
5407910510	0.4783
5407910520	0.4783
5407911000	0.2126
5407920510	0.4783
5407920520	0.4783
5407921010	0.2126
5407921020	0.2126
5407930510	0.4783
5407930520	0.4783
5407931000	0.2126
5407940510	0.4783
5407940520	0.4783
5407941000	0.2126

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
5408310510	0.4783
5408310520	0.4783
5408311000	0.2126
5408320510	0.4783
5408320520	0.4783
5408321000	0.2126
5408330510	0.4783
5408330520	0.4783
5408331000	0.2126
5408340510	0.4783
5408340520	0.4783
5408341000	0.2126
5509520000	0.3646
5509610000	0.1563
5509910000	0.3646
5510200000	0.3646
5515130510	0.4783
5515130520	0.4783
5515131010	0.2126
5515131020	0.2126
5515220510	0.4783
5515220520	0.4783
5515221000	0.2126
5515920510	0.4783
5515920520	0.4783
5515921010	0.2126
5515921020	0.2126
5516310510	0.4783
5516310520	0.4783
5516311000	0.2126
5516320510	0.4783
5516320520	0.4783
5516321000	0.2126
5516330510	0.4783
5516330520	0.4783
5516331000	0.2126
5516340510	0.4783
5516340520	0.4783
5516341000	0.2126
5601290020	0.9035
5602109010	1.0629
5602109090	0.5315
5602210000	1.0629
5602903000	0.2657
5603001010	1.0629
5701101300	0.9479
5701101600	0.9479
5702101000	1.0156
5702109010	1.0156
5702311000	0.7708
5702312000	0.6563
5702411000	0.6979
5702412000	0.5729
5702512000	0.9531
5702514000	0.9010
5702912000	0.9531
5702913000	0.9531
5702914000	0.9010
5703100000	0.6313
5704100010	0.2630
5704900010	0.2630
5705002010	0.6313
5801100000	1.0629
5801902090	1.0629
5802300020	1.0629
5803901100	1.0629
5803901200	1.0629
5805001000	0.5315
5805002000	1.0629
5805002500	1.0629

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
5806103020	1.0629
5806391000	1.0629
5810990010	1.0629
5811001000	1.0629
5903203010	0.5315
5903903010	0.5315
6001290000	1.0629
6002209000	1.0851
6002410000	1.0851
6002490000	1.0851
6002910000	1.0851
6101100000	1.0094
6101301500	0.5047
6101900020	0.5678
6102100000	1.0094
6102301000	0.5047
6102900010	0.5678
6103110000	0.8439
6103121000	0.4823
6103122000	0.1808
6103191000	0.4823
6103191500	0.2411
6103194010	0.1206
6103194020	0.1206
6103194030	0.1206
6103194040	0.4823
6103194050	0.1206
6103194060	0.0603
6103194080	0.2411
6103210010	0.9645
6103210020	0.8439
6103210030	0.9645
6103210050	0.9645
6103210060	0.9645
6103210070	0.9645
6103230005	0.4823
6103230007	0.4823
6103230010	0.4823
6103230025	0.3167
6103230030	0.4823
6103230035	0.4823
6103292060	0.5425
6103292066	0.1206
6103292068	0.1206
6103310000	0.9864
6103331000	0.4932
6103332000	0.1233
6103391000	0.4932
6103392020	0.5549
6103411010	0.8256
6103411020	0.8256
6103412000	0.8256
6103431010	0.4718
6103431020	0.4718
6103432010	0.4718
6103491010	0.4823
6103493012	0.5425
6103493036	0.5425
6103493060	0.6028
6104110000	0.8631
6104131000	0.4932
6104132000	0.1233
6104191000	0.4932
6104191500	0.1233
6104192050	0.5549
6104210010	0.8439
6104210030	0.8439
6104210040	0.9645
6104210060	0.9645
6104210070	0.8439

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6104210080	0.9645
6104230010	0.4823
6104230014	0.4823
6104230016	0.4823
6104230020	0.4823
6104230022	0.4823
6104230024	0.4823
6104230026	0.1206
6104230030	0.1206
6104230040	0.1206
6104230042	0.1206
6104291010	0.1206
6104291020	0.1206
6104291060	0.1206
6104291070	0.1206
6104292012	0.5425
6104292024	0.5425
6104292036	0.5425
6104292051	0.5425
6104292067	0.5425
6104292073	0.1206
6104292075	0.1206
6104292083	0.5425
6104310000	0.8631
6104331000	0.4932
6104332000	0.1233
6104391000	0.1233
6104392020	0.5549
6104410010	0.9645
6104410020	0.9645
6104431010	0.4823
6104431020	0.4823
6104432010	0.1206
6104432020	0.1206
6104441000	0.4823
6104442010	0.1206
6104442020	0.1206
6104490020	0.5425
6104510000	0.9978
6104531000	0.4989
6104532010	0.1247
6104532020	0.1247
6104591005	0.4989
6104591030	0.1247
6104591060	0.1247
6104592020	0.5612
6104610010	0.8256
6104610020	0.8256
6104610030	0.8256
6104631510	0.4718
6104631520	0.4718
6104692005	0.4823
6104693012	0.5425
6104693024	0.5425
6105201000	0.4617
6105901000	0.8080
6105903020	0.5194
6106201010	0.4617
6106201020	0.4617
6106901010	0.8080
6106901020	0.8080
6106902020	0.4040
6106903020	0.4040
6107190020	0.7077
6107292000	0.8256
6107992000	0.8256
6108391000	0.8167
6108992000	0.8167
6109901510	0.8080
6109901520	0.8080

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6109901530	0.8080
6109901540	0.8080
6109902035	0.5772
6110101010	1.2330
6110101020	1.2330
6110101030	1.2330
6110101040	1.2330
6110101050	1.2330
6110101060	1.2330
6110102010	0.8631
6110102020	0.8631
6110102030	0.8631
6110102040	0.8631
6111012050	0.8631
6110102060	0.8631
6110102070	0.8631
6110102080	0.8631
6110301510	0.4932
6110301520	0.4932
6110301530	0.4932
6110301540	0.4932
6110301550	0.4932
6110301560	0.4932
6110303005	0.1850
6110303010	0.1850
6110303015	0.1850
6110303020	0.1850
6110303025	0.1850
6110303030	0.1850
6110303035	0.1850
6110303040	0.1850
6110303045	0.1850
6110303050	0.1850
6110303055	0.1850
6110900012	0.5549
6110900028	0.5549
6110900048	0.5549
6110900050	0.5549
6110900072	0.5549
6110900074	0.5549
6111100010	1.0615
6111100030	1.0615
6112202020	0.8631
6114100020	0.8439
6114100040	0.8439
6114100050	0.8439
6114100060	0.8439
6114100070	0.8439
6114302030	0.4823
6114303012	0.6028
6114303042	0.4823
6114303052	0.4823
6114900050	0.5425
6115190020	1.0851
6115910000	0.8681
6115931010	0.4340
6115932010	0.4340
6115991410	0.4340
6115991810	0.4340
6116109040	0.0800
6116910000	0.9137
6116936400	0.4569
6116937400	0.4569
6116938800	0.1713
6116939400	0.1713
6116998020	0.4569
6116998030	0.3427
6117101000	1.0280
6117102010	0.4569
6117106020	0.2284

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6117200019	1.1422
6117200070	0.1713
6117800019	0.9747
6117800025	0.5711
6117800070	0.1713
6117900013	1.1422
6117900023	1.1422
6117900033	1.1422
6117900043	1.1422
6117900055	1.1422
6201110010	0.9774
6201110020	0.9774
6201122010	0.0611
6201122020	0.0611
6201133010	0.4398
6201133020	0.4398
6201134015	0.0489
6201134020	0.0489
6201134030	0.0977
6201134040	0.0977
6201190020	0.5498
6201911000	0.9554
6201912011	0.9554
6201912021	0.9554
6201932511	0.5374
6201932521	0.5374
6201990021	0.5374
6202110010	0.8455
6202110020	0.8455
6202122010	0.0604
6202122020	0.0604
6202133010	0.5562
6202133020	0.5562
6202134005	0.0618
6202134010	0.0618
6202134020	0.1236
6202134030	0.1236
6202190020	0.5562
6202911000	0.9663
6202912011	0.9663
6202912021	0.9663
6202934011	0.5435
6202934021	0.5435
6202990021	0.5435
6203111000	0.6039
6203112000	0.6039
6203121000	0.5435
6203192000	0.5435
6203194040	0.5435
6203210010	0.8455
6203210015	0.8455
6203210020	0.8455
6203210030	0.8455
6203210060	0.8455
6203230010	0.5435
6203230015	0.5435
6203230020	0.5435
6203230030	0.5435
6203230040	0.5435
6203310000	1.0267
6203331010	0.5435
6203331020	0.5435
6203391000	0.4831
6203394020	0.5435
6203411010	0.9448
6203411020	0.9448
6203411030	0.8858
6203412000	1.1810
6203433010	0.5199
6203433020	0.5199

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6203433030	0.5199
6203493025	0.5199
6204110000	0.9059
6204131000	0.5435
6204132010	0.1812
6204132020	0.1812
6204191000	0.5435
6204192000	0.1812
6204193050	0.5435
6204210010	0.8455
6204210030	0.8455
6204210040	0.8455
6204210060	0.8455
6204210070	0.8455
6204230015	0.5435
6204230020	0.5435
6204230025	0.5435
6204294012	0.5435
6204294024	0.5435
6204294036	0.5435
6204294072	0.5435
6204294084	0.5435
6204312010	1.0267
6204312020	1.0267
6204332000	0.0604
6204334010	0.4831
6204334020	0.4831
6204335010	0.0604
6204335020	0.0604
6204392010	0.4831
6204392020	0.4831
6204393010	0.0604
6204393020	0.0604
6204398020	0.5549
6204398030	0.1850
6204411000	0.6496
6204412010	1.0039
6204412020	1.0039
6204433010	0.4724
6204433020	0.4724
6204434010	0.4724
6204434020	0.4724
6204434030	0.2953
6204434040	0.2953
6204443010	0.4831
6204443020	0.4831
6204444010	0.4831
6204444020	0.4831
6204495020	0.5435
6204495030	0.1812
6204510010	0.9888
6204510020	0.9888
6204532010	0.4944
6204532020	0.4944
6204592010	0.4944
6204592020	0.4944
6204593010	0.4944
6204593020	0.4944
6204594020	0.5562
6204594030	0.1845
6204610010	0.9243
6204610020	0.9243
6204610030	0.9243
6204610040	0.9243
6204632510	0.4621
6204632520	0.4621
6204692010	0.4621
6204692020	0.4621
6204692030	0.4621
6204693020	0.5199

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6204699020	0.5199
6204699030	0.1733
6204699050	0.1733
6205101000	1.1554
6205102010	0.9243
6205102020	0.9243
6205301510	0.4621
6205301520	0.4621
6205902020	0.5777
6205902050	0.0578
6205904020	0.5777
6205904040	0.1155
6206100020	0.5777
6206100050	0.0578
6206201000	1.1554
6206202010	0.6932
6206202020	0.6932
6206203010	0.9243
6206203020	0.9243
6206402510	0.5199
6206402520	0.5199
6206900020	0.5199
6206900030	0.1733
6207290010	0.8572
6207922010	0.5315
6207992000	0.8267
6207994000	0.8267
6208290012	0.9243
6208920010	0.0591
6208920020	0.0591
6208920030	0.0591
6208920040	0.0591
6208992010	0.9448
6208992020	0.9448
6209100000	0.7915
6211202020	0.8455
6211203020	0.8455
6211204030	0.8455
6211205020	0.8455
6211206020	0.8455
6211207030	0.8455
6211310010	0.9059
6211310020	0.9059
6211310030	0.9059
6211310040	0.9059
6211310045	0.9059
6211310051	0.9059
6211330052	0.6039
6211410010	0.9663
6211410020	0.9663
6211410030	0.9663
6211410040	0.9059
6211410050	0.9663
6211410055	0.9663
6211410061	0.9663
6211430064	0.6039
6211430074	0.6039
6212900020	0.7161
6214102000	0.3357
6214200000	0.8951
6214300000	0.1119
6214400000	0.1119
6214900010	0.5559
6215900010	1.1189
6216005410	0.5035
6216005810	0.5035
6216008000	1.1189
6217100020	0.8267
6217100030	0.1181
6217900005	0.8267

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6217900010	0.1181
6217900030	0.8267
6217900035	0.1181
6217900055	0.8267
6217900060	0.1181
6217900080	0.8267
6217900085	0.1181
6301200010	0.9219
6301200020	0.9219
6301900030	0.1085
6302390010	0.9219
6304193040	0.8677
6304910050	0.7592
6304991000	1.0846
6304991500	1.0846
6304994000	1.0846
6304996010	1.0846
6501009000	1.3424
6503009000	1.3424
6505903030	0.9965
6505903045	0.5530
6505903090	0.8470
6505904030	0.8297
6505904045	0.4881
6505904090	0.8297
6505906040	0.4429

The Act also requires the Secretary to hold additional referendums if so requested by a representative group comprised of 10 percent or more of the producers, feeders, and importers who, during a representative period as determined by the Secretary, were engaged in the production, feeding, importation, or processing of sheep or sheep products. In any such referendum, if the continuation of the Order is not approved by a majority of producers, feeders, and importers voting in the referendum, or by producers, feeders, and importers voting in the referendum who account for at least two-thirds of the production represented by the persons voting in the referendum, the Secretary will suspend or terminate the Order. While the proposed rule indicated that the rules would also apply to any additional referendum conducted pursuant to the Act, it has been determined that these rules would apply only to the initial referendum and that rules for additional referendums would be published as necessary. This conforms to recent changes to other research and promotion programs.

The Act specifies that the initial referendum be conducted on a date and location established by the Secretary, under a procedure by which sheep producers, sheep feeders, and importers of sheep and sheep products intending to vote in the referendum shall certify that they were engaged in sheep production, sheep feeding, or importation of sheep and sheep products during the representative period and, on the same day, would vote in the referendum. In addition, the Act provides that the Secretary must provide absentee ballots on request made either in person or by mail. The initial referendum will be conducted at county CES offices. The CES of the Department will coordinate with State and county CES offices concerning their roles in conducting the initial referendum.

The final rule sets forth procedures to be followed in conducting the referendum under the Act, including definitions, supervision of the referendum, registration, voting procedures, reporting referendum results, and disposition of the ballots and records. The Farm Service Agency (FSA) of the Department will assist in the conduct of the referendum by (1) counting ballots, (2) determining the eligibility of challenged voters, and (3) reporting referendum results.

On August 8, 1995, AMS published in the Federal Register (60 FR 40313) a proposed rule that set forth procedures to be followed in conducting the referendum under the Act. The proposed rule included provisions concerning definitions, supervision of the referendum, registration, voting procedures, reporting referendum results, and disposition of the ballots and records. It also proposed that the initial referendum be conducted at the county CES offices and that FSA, formerly the Agricultural Stabilization and Conservation Service of the Department, assist in the conduct of the referendum by (1) counting ballots, (2) determining the eligibility of challenged voters, and (3) reporting referendum results.

The proposed rule was published (60 FR 40313, August 8, 1995) with a request for comments to be submitted by September 7, 1995. The Department received 26 written comments concerning the proposed referendum procedures from individual sheep producers and sheep feeders, as well as producer, feeder, and importer organizations and universities. Twenty-three written comments were filed on time and three comments were filed after the comment period closed. The late comments generally expressed the same views as the timely comments which are responded to herein. The commenters generally supported the proposed rule with certain qualifications.

The substantive changes suggested by commenters are discussed below, together with a description of the

substantive changes made by the Department upon review of the proposed procedures for the conduct of the referendum. Also, the Department has made other minor changes of a nonsubstantive nature for purposes of clarity and accuracy. For the reader's convenience, the discussion is organized by the topic headings of the proposed rule.

Definitions

Section 1280.621 Raw Wool

Twenty commenters suggested that the definition of ''raw wool'' should include wooltop, noils of wool, and wool waste. The Department finds that wooltop, noils of wool, and wool waste result from the processing of raw wool as defined in the Act and that to expand the definition would not be consistent with the intent of the Act. Accordingly, this suggestion is not adopted in the final rule.

Section 1280.624 Representative Period

Twenty-one commenters suggested that the representative period should be the 1995 calendar year. The Department has determined that the representative period should be the 12 consecutive months of calendar year 1994 to ensure that importers have ample opportunity to calculate their ''volume of production'' prior to casting a ballot. This is particularly true for those persons voting absentee. Accordingly, this suggestion is not adopted.

Section 1280.631 Volume of Production

Four commenters suggested that the importer's volume of production should be based on imports for a single consecutive 30-day period within the 12-month representative period, because domestic production is based on a 30-day period. The commenters were concerned that basing importer's volume of production on imports for an entire year would provide importers with an advantage over domestic producers. The Department finds that basing importer's volume of production on import volume for a calendar year is consistent with § 6(c)(4) of the Act. Accordingly, this suggestion is not adopted.

One commenter suggested that lambs younger than 6 months of age should be counted toward a producer's or feeder's volume of production total because all imported sheep products are used to calculate importers' live animal equivalents for the 12-month representative period. The Department determined that this suggestion has merit because all sheep and lambs in the inventory are subject to sale during a calendar year and many are marketed at less than 6 months of age. Accordingly, this suggestion is adopted and we have amended § 1280.631, Volume of Production, to reflect this change.

One commenter questioned whether domestic producers would be required to use a conversion factor to determine domestic volume of production. The Department has determined that domestic volume of production would be based on the number of live sheep owned continuously during a single period of at least 30 days during calendar year 1994, and located in the United States. Accordingly, no conversion factors are necessary for domestic producers or feeders. Two commenters suggested that the Department review the definition of volume of production and revise it to include an actual head count to establish volume of production. The commenter believed this would more accurately reflect the annual flock size of each producer. The Department reviewed this definition and determined that the basis for establishing volume of production is consistent with the intent of the Act. Accordingly, this suggestion is not adopted.

Referendum

Section 1280.650 General

One commenter asked whether two-thirds of the production represented by those persons voting in the referendum, or whether 51 percent of the simple majority vote could approve or defeat the Order. The Act provides that the final Order will become effective if it is approved by either a simple majority of the producers, feeders, and importers voting in the referendum or by those voting who account for at least two-thirds of the production represented by persons voting in the referendum.

One commenter suggested that the simple majority vote and the eligibility requirements that allow any sheep owner to participate in the referendum could mean that a disproportionately high number of hobby sheep owners will participate in the referendum and might lead to the adoption of an Order commercial producers, feeders, and importers are not in favor of it. The Act provides that each person who markets sheep and sheep products is subject to the assessment provisions of the Act. Therefore, all persons who are required to pay an assessment would be entitled to vote in the referendum regardless of the number of sheep they owned. Accordingly, this suggestion is not adopted.

One commenter suggested that the Order should not become operative unless the Secretary finds that at least 40 percent of those eligible to vote have participated in the referendum and that: (1) 65 percent of those voting cast votes in favor of implementation of the Order, and those so voting own the majority of the total quantity of sheep and sheep products in the preceding year owned by all who voted in the referendum, and (2) a majority of those who voted in favor of implementation of the Order, and those so voting owned 65 percent or more of the total quantity of sheep and sheep products in the preceding year owned by all who voted in the referendum. The Act provides that all persons who were engaged in the production, feeding, or importation of sheep or sheep products will be eligible to vote and that each person may cast a vote. Additionally, the Act provides that for the Order to become effective, it has to be approved by either a simple majority of the producers, feeders, and importers voting in the referendum or by those voting who account for at least two-thirds of the production represented by those persons voting in the referendum. Accordingly, this suggestion is not adopted.

Section 1280.652 Eligibility

Twenty-four commenters suggested either that no person under the age of 18 should be allowed to vote or that there should be some age limitation on eligibility to vote in the referendum. The Department finds that any person who is subject to the assessment should be entitled to vote. Accordingly, this suggestion is not adopted.

Nineteen commenters asked if producers who also qualify as feeders could vote once as a producer and once as a feeder. Section 1280.652 of the rule specifically states that each producer, feeder, and importer entity shall be entitled to cast only one ballot in the referendum. The intent is that there is only one vote per individual or legal entity. Thus, an individual who is both a producer and a feeder would have only one vote unless the individual represents more than one legal entity.

One commenter suggested that a person who collects a wool incentive check should be the only person eligible to vote. The Act specifically designates and establishes the requirements of those persons who are eligible to vote in the referendum. Receiving a wool incentive check under the National Wool Act of 1954 is not a requirement of eligibility to vote in the referendum. The Department believes that each person who is subject to the assessment should be entitled to cast a vote.

Accordingly, this suggestion is not adopted.

One commenter asked why a person who owned only one sheep for any single consecutive 30-day period in 1994 should have the same voting privileges as a producer who makes his or her living in the sheep business. If the Order is approved in referendum, all sales of domestic sheep and greasy wool will be subject to the assessment under the Order. Thus, the Department finds that any person subject to the assessment should be entitled to vote.

One commenter questioned whether the American producers want importers of sheep and sheep products voting in the referendum. The Act specifies that producers, feeders, and importers, except importers of raw wool, who were engaged in the production, feeding, or importation of sheep and sheep products during the representative period will be eligible to vote.

Two commenters suggested that all votes should be based on the actual volume of production (i.e., one sheep equals one vote). The Act clearly provides for approval of the Order based on a simple majority vote of participants or a two-thirds majority of the production represented by those voting in the referendum. Accordingly, this suggestion is not adopted.

One commenter suggested that voter eligibility needed to be clarified, but did not suggest any particular language. The Department has determined that any person who was a sheep producer, sheep feeder, or importer of sheep and sheep products during the representative period is eligible to vote and shall be entitled to cast one ballot in the referendum.

Section 1280.655 Registration Form and Ballot.

The Department, after further review of this section, determined that the last sentence in this section beginning with ''The ballot * * *'' and ending with ''* * * volume of production,'' should be deleted because it duplicates the fourth sentence in this section and thus is not necessary. Accordingly, the last sentence is deleted from this final rule.

Additionally, the Department is clarifying this section to make it clear that producers, feeders, and importers will enter their volume of production on the ballot, only if they intend to also cast their ballot based on their volume of production. Accordingly, we have amended § 1280.655 to reflect this clarification.

Section 1280.656 Registration and Voting.

One commenter suggested that a signature should not be required to request an absentee ballot. The rule does not require a signature, but it is the Department's intent that the request for an absentee ballot be made only by persons who are eligible to vote. It is the Department's expectation that nearly all written requests will be signed. No change in the final rule is required to accommodate this suggestion. The same commenter recommended that requests for an absentee ballot via electronic mail (e-mail) system be accepted. Since e-mail is available at many locations, using this method of communication would likely facilitate requests for absentee ballots for e-mail users in those offices that can receive e-mail. Any requests for absentee ballots by e-mail would be subject to the same conditions that apply to absentee ballots requested by mail or in person. Accordingly, this suggestion is adopted.

Additional Comments

One commenter suggested that the Department use the 63 pound average carcass weight for lambs and yearlings rather than the 57 pound average carcass weight for mature sheep to convert imported sheep meat to a live animal equivalent. The Department finds that the average carcass weight for imported lambs is widely recognized as being less than the average carcass weight of domestically slaughtered lambs and yearlings. Therefore, in the absence of definitive imported carcass weights and dressing percents, the Department believes that the 57 pound mature sheep weight as officially published in 1994 Livestock Slaughter Summary in March of 1995 more nearly reflects the average carcass weight of imported lamb and should be used for the purpose of calculating import volume of production for this initial referendum. Accordingly, this suggestion is not adopted.

Twenty commenters asked which base number the Department would use if a request or petition were made by a representative group comprised of 10 percent or more of the producers, feeders, and importers to conduct a subsequent referendum. The Department would use the most recent officially published Government data available at the time the request is made.

One commenter suggested that the conversion factors for wool products that account for fiber loss during production, fabric trim loss, and cutting loss be clarified to account only for the loss that is not recoverable and cannot be recycled back through the processing system at some point in the future. After discussions with the Department's Economic Research Service (ERS), the Department believes that these suggestions should be considered in any future revisions of the conversion factors that ERS may publish as an import library and maintained and updated. The conversion factors that account for fiber lost during processing are currently established by ERS based on consultation with major wool manufacturers. The Department does not intend to propose any changes to the most recent published conversion factors for the purpose of this initial referendum. Accordingly, this suggestion is not adopted.

Three commenters suggested that the proposed method of converting the weight of wool represented by wool product imports is inherently incorrect in that it (1) uses conversion factors developed for sheep and sheep products, (2) assumes that they translate equally to wool and wool products, and (3) will significantly understate the contribution of wool product imports. The commenters further suggested that the greasy wool equivalent weight of wool products should be determined by fleece weight for both the U.S. producers and importers rather than the live sheep weight for importers and the fleece weight for domestic producers. Additionally, the commenters suggested that the common denominator for determining live sheep equivalents for wool and wool products should be the average weight of greasy wool fleece. Finally, the commenters suggested that the Department use 7.7 pounds of greasy wool per head as published by the Department's National Agricultural Statistics Service in the March 29, 1995, issue of ''Wool and Mohair'' to calculate the number of live animal equivalents rather than the 114 pound of live weight as proposed by the Department. The Department reviewed these comments carefully and determined that since domestic volume of production is based on the number of live animals and not on wool production that a live weight which more nearly reflects the live weight of imported sheep would be used to calculate the number of live sheep equivalents for both imported sheep meat and wool products. Accordingly, this suggestion is not adopted.

Two commenters suggested that the Department review the conversion factors to ensure that conversion factors are consistent. ERS maintains these conversion factors as an import library, reviews these factors periodically, and

makes changes whenever new or additional information is available. At this time the Department does not anticipate changes in the conversion factors for the purposes of the vote. Nevertheless, we welcome all information regarding conversion factors with the goal of adding to our knowledge of fiber contents for all wool and wool products.

Three commenters suggested that the Department initiate a fact finding process to identify importers eligible to vote in the referendum to ensure that all importers identified are adequately notified of the referendum. Additionally, one commenter suggested that voting instructions and absentee ballots be mailed to all importers. The Department believes that producers, feeders, and importers will have ample opportunity to learn of the referendum through industry organizations, newspapers, industry publications, Federal Register, and other news service resources. The Department will make information concerning the referendum available to a variety of news outlets, including outlets recommended by importers. An absentee voting period will be announced when the in person voting date is announced. Producers, feeders, and importers will request an absentee ballot from the county CES office and mail or personally deliver the absentee ballot to the county CES office where the absentee ballot was requested. Accordingly, we have not adopted these suggestions as proposed.

One commenter requested that the Department permanently establish, through regulatory promulgation, HTS numbers subject to assessment as part of this proposed rule. The Department published in the October 3, 1995, Federal Register (60 FR 51737) for public comment implementing rules and regulations, which include HTS classification numbers subject to assessment. Thus, the commenters' proposal has already been proposed in another rulemaking.

One commenter suggested that AMS should use information available from the U.S. Customs Service to calculate the volume vote for each importer in the referendum rather than requiring importers to make this calculation. The Department believes that this information should be readily available to importer businesses through normal recordkeeping processes. Accordingly this suggestion is not adopted.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. An Order which will be the subject of a referendum vote was published in the December 5, 1995, Federal Register (60 FR 62298). For the program to become operational, the Order must be approved by sheep producers, sheep feeders, and importers of sheep and sheep products voting in the initial referendum. In order to conduct a referendum in a timely manner, this rule should be made effective as soon as possible. Further, interested persons were afforded a 30 day comment period on the proposed referendum rule, and no useful purpose would be served in delaying the effective date. Therefore, this final rule is effective on the date of publication in the Federal Register.

Referendum Order

It is hereby directed that a referendum be conducted among eligible sheep producers, sheep feeders, and importers of sheep and sheep products to determine whether an Order will become effective if approved by those eligible persons voting in the referendum. In-person voting in the referendum will be on February 6, 1996, at the county Cooperative Extension Service offices. Absentee ballots will be available at those offices from January 16, 1996, through January 26, 1996. The representative period to establish voter eligibility will be the period from January 1, 1994, through December 31, 1994.

In summary, this final rule adopts provisions of the August 8, 1995 proposed rule with the changes discussed herein and with other minor changes made for purposes of clarity and accuracy.

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sheep and sheep products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1280 is added to Chapter XI to read as follows:

PART 1280—SHEEP PROMOTION, RESEARCH, AND INFORMATION

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Procedures for the Conduct of Referendum

Definitions

Sec.

Referendum

Authority: 7 U.S.C. 7101–7111.

Subpart E—Procedures for the Conduct of Referendum

Definitions

§ 1280.601 Act.

The term *Act* means the Sheep Promotion, Research, and Information Act of 1994, 7 U.S.C. 7101–7111; Public Law 103–407; 108 Statute 4210; as approved October 22, 1994, and any amendments thereto.

§ 1280.602 Administrator.

The term *Administrator* means the Administrator of the Agricultural Marketing Service, or any officer or

employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Administrator's stead.

§ 1280.603 Carbonized wool.

The term *Carbonized wool* means wool that has been immersed in a bath, usually of mineral acids or acid salts, that destroys vegetable matter in the wool, but does not affect the wool fibers.

§ 1280.604 Farm Service Agency.

The term *Farm Service Agency*—formerly Agricultural Stabilization and Conservation Service (ASCS)—also referred to as ''FSA,'' means the Farm Service Agency of the Department.

§ 1280.605 Farm Service Agency County Committee.

The term *Farm Service Agency County Committee,* also referred to as the ''FSA County Committee or COC,'' means the group of persons within a county elected to act as the FSA County Committee or COC.

§ 1280.606 Farm Service Agency County Executive Director.

The term *Farm Service Agency County Executive Director* also referred as the ''FSA County Executive Director,'' means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and be responsible for the day-to-day operations of the county FSA office, or the person acting in such capacity.

§ 1280.607 Cooperative Extension Service.

The term *Cooperative Extension Service,* also referred to as ''CES'' means the State partner in the Cooperative Extension Service system.

§ 1280.608 Cooperative Extension Service Agent.

The term *Cooperative Extension Service Agent,* also referred to as the ''CES Agent,'' means an employee of the Cooperative Extension Service.

§ 1280.609 Cooperative Extension Service of the U.S. Department of Agriculture.

The term *Cooperative Extension Service of the U.S. Department of Agriculture,* also referred to as ''CES,'' means the Federal component of the Cooperative Extension Service.

§ 1280.610 Degreased wool.

The term *Degreased wool* means wool from which the bulk of impurities has been removed by processing.

§ 1280.611 Department.

The term *Department* means the U.S. Department of Agriculture.

§ 1280.612 Deputy Administrator.

The term *Deputy Administrator* means the Deputy Administrator for Program Delivery and Field Operations, FSA, U.S. Department of Agriculture or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Deputy Administrator's stead.

§ 1280.613 Feeder.

The term *Feeder* means a person who feeds lambs until the lambs reach slaughter weight.

§ 1280.614 Greasy wool.

The term *Greasy wool* means wool that has not been washed or otherwise cleaned.

§ 1280.615 Importer.

The term *Importer* means any person who imports sheep and sheep products into the United States.

§ 1280.616 Order.

The term *Order* means the Sheep and Wool Promotion, Research, Education, and Information Order.

§ 1280.617 Person.

The term *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1280.618 Producer.

The term *Producer* means any person, other than a feeder, who owns or acquires ownership of sheep.

§ 1280.619 Public notice.

The term *Public notice* means information regarding a referendum which shall be provided by the Secretary, without advertising expenses, through press releases and by State and county CES offices and county FSA offices, by means of newspapers, electronic media, county newsletters, and the like. Such notice shall contain the referendum date and location, registration and voting requirements, rules regarding absentee voting, and other pertinent information.

§ 1280.620 Pulled wool.

The term *Pulled wool* means wool that is pulled from the skin of slaughtered sheep.

§ 1280.621 Raw wool.

The term *Raw wool* means greasy wool, pulled wool, degreased wool, or other carbonized wool.

§ 1280.622 Referendum.

The term *Referendum* means any referendum to be conducted by the Secretary pursuant to the Act where producers, feeders, and importers of sheep and sheep products, except an importer of only raw wool, shall be given the opportunity to vote.

§ 1280.623 Registration period.

The term *Registration period* means a 1 day period to be announced by the Secretary for registration of producers, feeders, and importers desiring to vote in a referendum. The registration period shall be the same day as the voting period.

§ 1280.624 Representative period.

The term *Representative period* means 12 consecutive months of calendar year 1994.

§ 1280.625 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has been delegated or to whom authority may hereafter be delegated to act in the Secretary's stead.

§ 1280.626 Sheep.

The term *Sheep* means ovine animals of any age, including lambs.

§ 1280.627 Sheep products.

The term *Sheep products* means products produced, in whole or in part, from sheep, including wool and products containing wool fiber.

§ 1280.628 State.

The term *State* means each of the 50 States.

§ 1280.629 Unit.

The term *Unit* means each State, group of States, or class designation that is represented on the Board.

§ 1280.630 United States.

The term *United States* means the 50 States and the District of Columbia.

§ 1280.631 Volume of production

The term *volume of production* means the largest number of head of domestic sheep that a domestic sheep producer or sheep feeder entity continuously owned and that were located in the United States during any single consecutive 30-day period during the representative period. The term ''volume of production'' also means the number of head of imported live sheep or the number of live sheep equivalents that an importer imported into the United States during the representative period, excluding imported raw wool.

§ 1280.632 Voting period.

The term *Voting period* means a 1-day period to be announced by the Secretary for voting in the referendum.

§ 1280.633 Wool.

The term *Wool* means the fiber from the fleece of a sheep.

§ 1280.634 Wool products.

The term *Wool products* means products produced, in whole or in part, from wool and products containing wool fiber.

Referendum

§ 1280.650 General.

(a) A referendum to determine whether eligible sheep producers, sheep feeders, and importers of sheep and sheep products approve the Order. Importers who only import raw wool are not eligible to vote in the referendum.

(b) The Order shall become operational only if the Secretary determines that the Order is approved by a majority of sheep producers, sheep feeders, and importers of sheep and sheep products voting in the referendum or by sheep producers, sheep feeders, and importers of sheep and sheep products voting in the referendum who account for at least two-thirds of the production represented by those voting in the referendum.

(c) The initial referendum shall be conducted at the county CES offices.

(d) The FSA of the Department shall assist in the conduct of the initial referendum.

§ 1280.651 Supervision of referendum.

The Administrator shall be responsible for conducting the referendum in accordance with this subpart.

§ 1280.652 Eligibility.

(a) Eligible producers, feeders, and importers. Each person who was a sheep producer, sheep feeder, or importer of sheep and sheep products during the representative period is entitled to register and vote in the referendum. Each producer, feeder, and importer entity shall be entitled to cast only one ballot in the referendum. Importers who only import raw wool are not eligible to register and vote in the referendum.

(b) Proxy registration and voting. Proxy registration and voting is not authorized, except that an officer or employee of a corporate producer, feeder, or importer, or any guardian, administrator, executor, or trustee of a producer's, feeder's, or importer's estate, or an authorized representative of any eligible producer, feeder, or importer entity (other than an individual producer, feeder, or importer), such as a corporation or partnership, may register and cast a ballot on behalf of that entity. Any individual who registers to vote in the referendum on behalf of any producer, feeder, or importer entity shall certify that he or she is authorized by such entity to take such action.

(c) Joint and group interest. A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation engaged in sheep production, sheep feeding, or the importation of sheep and sheep products as a producer, feeder, or importer entity, shall be entitled to only one vote, provided, however, that any member of a group may register to vote as a producer, feeder, or importer if he or she is an eligible producer, feeder, or importer separate from the group.

§ 1280.653 Time and place of registration and voting.

The referendum shall be held for one day on a date to be determined by the Secretary. Eligible persons shall register and vote following the procedures in § 1280.656. Except for absentee ballots, registration and voting shall take place during the normal business hours of each county CES office.

§ 1280.654 Facilities for registering and voting.

Each county CES office shall provide:

(a) adequate facilities and space to permit producers, feeders, and importers to register and to mark their ballots in secret,

(b) a sealed box or other suitable receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times, and

(c) copies of the Order for review.

§ 1280.655 Registration form and ballot.

A ballot (Form LS–61) and a registration and certification form (Form LS–61–2) shall be used for voting in person. The information required on the registration and certification form includes name, address, telephone number, and county of voter residence. The form also contains the certification statement referenced in § 1280.656(a)(1). The ballot requires producers, feeders and importers to check a ''yes'' or ''no'' and provides space to record volume of production. If a producer, feeder, or importer wishes to cast their ballot based on their volume of production, the voter must record their volume of production in the space provided on the ballot. A combined registration/certification and ballot form (Form LS–62) shall be used for absentee voting. The information required on the combined registration/certification and ballot form includes name, address, telephone number, and county of voter residence. Form LS–62 also contains the certification statement referenced in § 1280.656(b)(1) and the absentee ballot.

§ 1280.656 Registration and voting procedures.

(a) Registering and voting in-person.

(1) Each producer, feeder, and importer, except importers who import only raw wool, who wants to vote in a referendum shall register on the day of voting at the county CES office in which the producer's, feeder's, or importer's residence is located, or at the county CES office that serves the county in which the producer's, feeder's, or importer's residence is located. Producer, feeder, or importer entities other than individuals shall register at the county CES office in the county in which their headquarters office or business is located, or at the county CES office that serves the county in which the entities' headquarters office or business is located. Producers, feeders, and importers will be required to record on the in-person voter registration list (Form LS–61–3) their names and, if applicable, the name of the entity they represent before they receive a registration and certification form and ballot. To register, producers, feeders, or importers shall complete the registration and certification form (Form LS–61–2) and certify that:

(i) they or the entity they represent were producers, feeders, or importers during the specified representative period;

(ii) the person voting on behalf of an entity referred to in § 1280.652 is authorized to do so; and

(iii) the volume of production listed on the ballot is a true and accurate representation.

(2) Each eligible producer, feeder, or importer who has not voted by means of an absentee ballot may cast a ballot in-person at the location and time set forth in § 1280.653 and on a date to be announced by the Secretary. Eligible persons who record their name and the entity they represent on the in-person voter registration list (Form LS–61–3) will receive a registration and certification form (Form LS–61–2) and a ballot (Form LS–61). Voting shall be conducted under the supervision of the county CES agent or designee. Voters will enter the information requested on the registration and certification form (Form LS–61–2) as indicated above. Producers, feeders, and importers will then mark their ballots to indicate ''yes'' or ''no'' and if voting volume of production record their volume of production in the space provided on the ballot. Voters shall place their

completed ballots in an envelope marked ''SHEEP BALLOT,'' (Form LS–61–1) seal and place it in the completed and signed registration and certification form/envelope marked ''SHEEP REFERENDUM,'' (Form LS–61–2) seal that envelope and personally place it in a box marked ''Ballot Box'' or other suitable receptacle. A copy of the applicable in-person voter registration list (Form LS–61–3) prepared by the county CES office shall be provided to each FSA county office for in-person voter verification.

(b) Absentee voting. (1) Eligible producers, feeders, and importers who are unable to vote in person may request a combined registration/certification and absentee ballot form (Form LS–62) and two envelopes—one marked ''SHEEP BALLOT'' (Form LS–61–1) and the other marked ''SHEEP REFERENDUM'' (LS–62–1), by mail or in person from the county CES office in the county in which they reside or the county CES office that serves the county in which they reside, if individuals, or in which their main office is located, if a corporation or other entity. These forms and envelopes will be mailed by the county CES agent or designee to the address provided by the prospective voter. Only one absentee registration/certification form and absentee ballot will be provided to each eligible producer, feeder, or importer. The forms must be requested during a specified time period which will be announced by the Secretary. The county CES office shall enter on the absentee voter request list (Form LS–62–2) the name, address and entity requesting an absentee ballot and the date the forms were requested. A copy of the applicable absentee voter request list (Form LS–62–2) prepared by the county CES office shall be provided to each FSA county office for absentee voter verification.

(2) To register, eligible producers, feeders, and importers must complete and sign the combined registration/certification form and absentee ballot (Form LS–62) and certify that:

(i) they or the entity they represent were producers, feeders, or importers during the specified representative period,

(ii) if voting on behalf of an entity referred to in § 1280.652, they are authorized to do so; and

(iii) the volume of production listed on the ballot is a true and accurate representation.

(3) A producer, feeder, or importer, after completing the absentee voter registration form and the ballot, shall remove the ballot portion of the combined registration/certification and absentee ballot form (Form LS–62) and seal the completed ballot in a separate envelope marked ''SHEEP BALLOT'' (Form LS–61–1) and place the sealed envelope in a second envelope marked ''SHEEP REFERENDUM'' (Form LS–62–1) along with the signed registration form. Producers, feeders, and importers shall legibly print their names on the envelope marked ''SHEEP REFERENDUM'' (Form LS–62–1), and mail or hand deliver it to the local county CES office of the county in which they reside or the county CES office serving the county in which they reside. In the case of a partnership, corporation, estate, or other entity, the registration form and ballot must be mailed or hand delivered to the county CES office in the county in which its main office is located or the county CES office in the county serving the county in which its main office is located.

(4) Absentee ballots must be received in the county CES office by the close of business, 2 business days before the date of the referendum. Absentee ballots received after that date shall be counted as invalid ballots. Upon receiving the ''SHEEP REFERENDUM'' envelope containing the registration form and ballot, the county CES agent or designee shall place it, unopened in a secure ballot box. The county CES agent or designee shall record receipt of the absentee vote on the absentee voter request list (Form LS–62–2).

(5) A person who casts an absentee ballot that is not recorded as being received or that is received after the deadline specified in this section may vote in person at the appropriate county CES office on the day of the referendum.

§ 1280.657 List of registered voters.

The in-person voter registration list (Form LS–61–3) and the absentee voter request list (Form LS–62–2) shall be available for inspection on the day of the referendum at the county CES office and subsequently at the FSA county office. They shall be posted during regular office hours in a conspicuous public location at the FSA county office on the second business day following the date of the referendum.

§ 1280.658 Challenge of voters.

(a) Challenge period. On the day of the referendum, the names of voters challenged shall be reported to the CES county agent, who will refer them to the FSA county office. After that, the names of the challenged voters shall be referred directly to the FSA county office. A challenge may be made no later than the close of business on the second business day after the date of the referendum.

(b) Who may challenge. Any person may challenge a voter. Any person who wants to challenge must do so in writing and must include the full name of the individual or other entity being challenged. Each challenge of a voter must be made separately and each challenge must be signed by the challenger. The Secretary may issue other guidelines as the Secretary deems necessary.

(c) Determination of challenges. The FSA County Committee or its representative, acting on behalf of the Administrator, shall make a determination concerning the challenge and shall notify challenged producers, feeders, or importers as soon as practicable, but no later than five business days after the date of the referendum. If the FSA County Committee or its representative, acting on behalf of the Administrator, is unable to determine whether a person was a producer, feeder, or importer during the representative period, or verify a voter's recorded volume of production, it may require the person challenged to submit records such as sales documents, import documents, or other similar documents in order to demonstrate his or her eligibility or to prove that the person was a producer, feeder, or importer during the representative period and to verify that the recorded volume of production was accurately stated.

(d) Challenged ballot. The registration and certification form (Form LS–61–2) containing the ballots cast by producers, feeders, or importers voting in person who are challenged shall be removed from the ballot box and placed in a separate box until the challenge has been resolved. The SHEEP REFERENDUM envelopes (Form LS–62–1) containing absentee voter registration forms and absentee ballots of challenged absentee voters also shall be removed from the ballot box and placed in the box containing ballots of challenged producers, feeders, and importers. A challenge to a ballot shall be deemed to have been resolved if the determination of the FSA County Committee or its representative is not appealed within the time allowed for appeal or there has been a determination by FSA after an appeal.

(e) Appeal. A person declared to be ineligible to register and vote or whose recorded volume of production has been questioned by the FSA County Committee or its designee, acting on behalf of the Administrator, may file an appeal at the FSA county office within three business days after notification of such decision. Such person may be required to provide documentation such as sales documents, import documents, or similar documents in order to demonstrate his or her eligibility or

verify the recorded volume of production. An appeal shall be determined by the FSA County Committee, or its designee, acting on behalf of the Administrator, as soon as practicable, but in all cases not later than the ninth business day after the date of the referendum. The FSA County Committee or its designee's determination on an appeal is final.

§ 1280.659 Receiving ballots.

A ballot shall be considered to have been received during the voting period if:

(a) it was cast in person in the county CES office prior to the close of business on the day of the referendum; or

(b) it was cast as an absentee ballot, and was received in the county CES office not later than two business days before the date of the referendum.

§ 1280.660 Canvassing ballots.

(a) Counting the ballots. The county CES agent or designee shall deliver the sealed ballot box, the in-person voter registration list (Form LS–61–3) and the absentee voter request list (Form LS–62–2) to the FSA county office by the close of business on the first business day following the date of the referendum. FSA county Executive Director and the county CES agent or designee shall check the registration forms and ballots of all voters against the in-person voter registration list (Form LS–61–3) and the absentee voter request list (Form LS–62–2) to determine properly registered voters. The ballots of producers, feeders, and importers voting in person whose names are not on the in-person voter registration list (Form LS–61–3), shall be declared invalid. Likewise, the ballots of producers, feeders, and importers voting absentee whose names are not on the absentee voter request list (Form LS–62–2) shall be declared invalid. All ballots of challenged voters declared ineligible or invalid shall be kept separate from the other ballots and shall not be counted as valid ballots. The valid ballots shall be counted on the tenth business day after the referendum date. FSA county office employees shall remove the ''SHEEP BALLOT'' envelope from the registration/certification form envelopes or absentee ballot envelopes of all eligible voters and all challenged voters determined to be eligible. After removing all ''Sheep Ballot'' envelopes, FSA county employees shall open them and count the ballots. The ballots shall be counted as follows:

(1) Number of eligible producers, feeders, and importers casting valid ballots;

(2) Number of producers, feeders, and importers favoring the Order;

(3) Number of producers, feeders, and importers not approving the Order;

(4) Volume of production recorded by producers, feeders, and importers approving the Order;

(5) Volume of production of producers, feeders, and importers not approving the Order;

(6) Number of challenged ballots;

(7) Number of challenged ballots deemed ineligible;

(8) Number of invalid ballots; and

(9) Number of spoiled ballots.

(b) Invalid Ballots. Ballots shall be declared invalid if a producer, feeder, or importer voting in-person has failed to sign the voter registration list (Form LS–61–3) or an absentee voter's name is not recorded on the absentee voter request list (Form LS–62–2), or the registration form or ballot was incomplete or incorrectly completed.

(c) Spoiled Ballots. Ballots shall be considered spoiled if they are mutilated or marked in such a way that the ''yes'' or ''no'' vote is illegible. Spoiled ballots shall not be considered as approving or disapproving the Order, or as a ballot cast in the referendum.

(d) Confidentiality. All ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

§ 1280.661 FSA county office report.

The FSA county office shall notify the FSA State office of the results of the referendum. Each FSA county office shall transmit the results of the referendum in its county to the FSA State office. Such report shall include the information listed in § 1280.660(a). The results of the referendum in each county may be made available to the public upon notification from the Deputy Administrator FSA that the final results have been released by the Secretary. A copy of the report of results shall be posted for 30 days in the FSA county office in a conspicuous place accessible to the public, and a copy shall be kept on file in the FSA county office for a period of at least 12 months after the referendum.

§ 1280.662 FSA State office report.

Each FSA State office shall transmit to the Deputy Administrator, FSA, a written summary of the results of the referendum received from all the FSA county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State, and shall be certified by the FSA State Executive Director. The FSA State office shall maintain a copy of the summary where it shall be available for public inspection for a period of not less than 12 months beginning upon notification from the Deputy Administrator, FSA, that the final results have been released by the Secretary.

§ 1280.663 Results of the referendum.

(a) The Deputy Administrator, FSA, shall submit the results of the referendum to the Administrator. The Administrator shall prepare and submit to the Secretary a report of the results of the referendum. The results of any referendum shall be issued by the Department in an official press release and published in the Federal Register. State reports and related papers shall be available for public inspection in the office of the Marketing Programs Branch, Livestock and Seed Division, AMS, USDA, Room 2606, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems it necessary, the report of any State or county shall be reexamined and checked by such persons as may be designated by the Deputy Administrator, FSA, or the Secretary.

§ 1280.664 Disposition of ballots and records.

Each FSA county Executive Director shall place in sealed containers marked with the identification of the referendum the in-person voter registration list, absentee voter request list, voted ballots, challenged registration/certification forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records shall be placed under lock in a safe place under the custody of the FSA county Executive Director for a period of not less than twelve months after the referendum. If no notice to the contrary is received from the Deputy Administrator, FSA, by the end of such time, the records shall be destroyed.

§ 1280.665 Instructions and forms.

The Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

Dated: December 8, 1995.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 95–30491 Filed 12–14–95; 8:45 am]

BILLING CODE 3410–2–P

Rural Utilities Service

7 CFR Part 1755

RUS General Specification for Digital, Stored Program Controlled Central Office Equipment (Form 522)

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby amends the RUS General Specification for Digital, Stored Program Controlled Central Office Equipment by eliminating the requirement for multiparty service and certain other technical aspects associated with this service. This amendment does not diminish public telephone service integrity.

EFFECTIVE DATE: This regulation is effective on January 16, 1996.

FOR FURTHER INFORMATION CONTACT: John J. Schell, Chief, Central Office Equipment Branch, Telecommunications Standards Division, U.S. Department of Agriculture, Rural Utilities Service, room 2836–S, Washington, DC 20250–1500, telephone (202) 720–0671.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule will not:

(1) Preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule;

(2) Have any retroactive effect; and

(3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The changes to the General Specification for Digital, Stored Program Controlled Central Office Equipment in this final rule are updates which have been made so that RUS telephone borrowers can continue to provide their subscribers with the most up-to-date and efficient telephone service.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements contained in this final rule have been approved by OMB under control number 0572–0059. Comments concerning these requirements should be directed to the United States Department of Agriculture, Clearance Office, OIRM, room 404–W, Washington, DC 20250 or to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 10102, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

RUS has determined that this final rule will not significantly affect the quality of the 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 final rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS and RTB loans and loan guarantees to governmental and nongovernmental entities from coverage under this Order.

Background

RUS makes loans and loan guarantees to telephone systems to provide and improve telecommunications service in rural areas, as authorized by the Rural Electrification Act of 1936, as amended, 7 U.S.C. 901 *et seq.*, (RE Act). RUS issues construction standards and specifications for materials and equipment. In accordance with the RUS loan contract, these standards and specifications apply to facilities constructed by RUS telephone borrowers. The Rural Electrification Loan Restructuring Act of 1993 (RELRA) (107 Stat. 1356) contemplates elimination of multiparty service by telephone companies receiving RUS loans. This final rule eliminates the requirement in 7 CFR 1755.522 for multiparty service along with features which are associated with that service such as revertive calling and multifrequency ringing.

Public comments regarding the proposed rule were received from AT&T and the United States Telephone Association. These comments were taken into consideration in preparing the final rule.

1. *Comment.* One commenter stated that although there was no issue to be taken with the proposed rule as it stands, much of the remainder of RUS Form 522 is counter to the STMP requirements. The commenter recommended that all antiquated requirements be eliminated and an additional requirement be added which limits future funding by RUS to products which demonstrate available technology supporting STMP regulations.

Response. RUS disagrees that the Form 522 is counter to the State Telecommunications Modernization Plan requirements. Form 522 is, and has always been, intended as a basic specification. Traditionally, RUS has left development of specifications for advanced telecommunication features to other sources within the telecommunications industry. RUS believes that the industry has provided, and will continue to provide, appropriate specifications for the necessary advanced features.

2. *Comment.* One commenter commended RUS for proposing the elimination of the multiparty requirement and recommended that RUS conduct a review of all its regulations in order to identify and rescind all obsolete requirements.

Response. RUS continuously reviews and updates regulations to keep them as technologically current as possible.

List of Subjects in 7 CFR Part 1755

Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set out in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. Section 1755.522 is amended by revising paragraphs (e)(5), (e)(6), (e)(7), (e)(11), and (e)(19)(vii), removing paragraph (f)(1)(ii), redesignating paragraph (f)(1)(iii) as paragraph (f)(1)(ii), removing paragraphs (g)(2)(ii), (g)(2)(iii) and (g)(8), redesignating paragraphs (g)(2)(iv) through (g)(2)(xv) as paragraphs (g)(2)(ii) through (g)(2)(xiii), and paragraphs (g)(9) through (g)(12) as paragraphs (g)(8) through (g)(11), revising paragraph (i)(2)(ix) and the text preceeding the table in paragraph (p)(1)(vi), amending paragraph (p)(3)(i) by removing the entry ''Revertive'' from the table, removing paragraph (r)(6), redesignating paragraphs (r)(7) and (r)(8) as paragraphs (r)(6) and (r)(7), and revising paragraph (s)(5)(ii)(A), the text preceeding the table in paragraph (s)(5)(ii)(C), and paragraph (s)(6)(ii) to read as follows:

§ 1755.522 RUS general specification for digital, stored program controlled central office equipment.

* * * * *

(e) * * *

(5) The basic switching system shall include the provision of software programming and necessary hardware, including memory, for optional custom calling services such as call waiting, call forwarding, three-way calling, and abbreviated dialing. It shall be possible to provide these services to any individual line (single-party) subscriber. The addition of these services shall not reduce the anticipated ultimate engineered line, trunk, and traffic capacity of the switching system as specified in appendix A of this section.

(6) The requirements in this specification apply only to single party lines. Although only single frequency ringing is required, other types may be requested in appendix A of this section.

(7) Provision shall be made for local automatic message accounting (LAMA), and for traffic service position system (TSPS) trunks, or equivalent, to the operator's office when required either initially or in the future.

* * * * *

(11) Provision shall be made for hotel-motel arrangements, as required by the owner, to permit the operation of message registers at the subscriber's premises to record local outdial calls by guests (see Item 10.5, appendix A of this section).

* * * * *

(19) * * *

(vii) If the 911 service bureau is holding a calling line, it shall be possible for the 911 line to cause the equipment to ring back the calling line. This is done by providing a flash of on-hook signal from the 911 line lasting from 200 to 1,100 milliseconds. The signal to the calling line shall be ringing current if the line is on-hook, or receiver off-hook (ROH) tone if the line is off-hook.

* * * * *

(i) * * *

(2) * * *

(ix) Distinctive tone, when required for alarm calls, or other features, shall consist of high tone interrupted at 200 IPM with tone on 150 ms and off 150 ms.

* * * * *

(p) * * *

(1) * * *

(vi) The traffic capacity in the following table should be used for small trunk groups such as pay station, special service trunks, intercept, and PBX trunks, unless otherwise specified in appendix A of this section:

* * * * *

(s) * * *

(5) * * *

(ii) * * *

(A) The ringing generators shall have an output voltage which approximates a sine wave and, as a minimum, shall be suitable for ringing straight-line ringers. Although not a requirement for RUS listing, decimonic, synchromonic, or harmonic ringing may also be specified in appendix A of this section.

* * * * *

(C) The output of each generator shall have three or more voltage taps or a single tap with associated variable control. Taps or control shall be easily accessible as installed in the field. Software control of ringing generator outputs via I/O devices may be provided in lieu of taps. The taps, or equivalent, shall be designated L, M, and H. The variable control shall have a locking device to prevent accidental readjustment. The outputs at the terminals of the generators with a voltage input of 52.1 volts and rated full resistive load shall be as follows for the ringing frequencies provided:

* * * * *

(6) * * *

(ii) The ringing cycle provided by the interrupter equipment shall not exceed 6 seconds in length. The ringing period shall be 2 seconds.

* * * * *

3. Appendix A to 7 CFR 1755.522 is amended by revising items 6., 7., and 10. to read as follows:

Appendix A to 7 CFR 1755.522—Specification for Digital, Stored Program Controlled Central Office Equipment Detailed Requirements (Host)

* * * * *

6. Line Circuit Requirements (Includes all lines associated with RST's.)

6.1 *Types of Lines*

	No. of lines		No. of EAS areas	Total No. of lines required
	Local service only	both local and EAS service		
6.1.1 Individual—Flat Rate	_____	_____	_____	_____
6.1.2 Individual—Message Rate	_____	_____	_____	_____
6.1.3 Pay Station	_____	_____	_____	_____
6.1.4 Telephone Company Official Lines	_____	_____	_____	_____
6.1.5 Wire Chief	_____	_____	_____	_____
6.1.6 911 Emergency Service Bureau Lines	_____	_____	_____	_____
6.1.7 Number Hunting PBX Groups:	_____	_____	_____	_____

No. of lines in group	No. of groups	Direct in dial*	Restricted service at COE	Type		No. of lines		No. of EAS areas	Total No. of lines required
				Ground start	Loop start	Local service only	Both local and EAS service		
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____

*Furnish translation information under Item 5.

6.1.8 WATS Lines (Give details in Appendix A, Item 16)
Number of Inward WATS Lines _____
Number of Outward WATS Lines _____
6.1.9 Special Lines Required _____
(Explain in Item 16, Appendix A)
6.1.10 Total Number of Lines Required
Host _____ (Incl. DDI Concentrator Lines)
RST 1 _____
RST 2 _____
RST 3 _____
Total _____
6.1.11 Total Director Numbers Required _____
(Including RST's) (see Item 7.1, Appendix A)
6.1.12 Pay Station
Type _____
New ____ Reused ____
(Describe in Item 16, Appendix A)
6.1.13 Line Concentrator
6.1.13.1 Supplied by Owner (see Item 16, Appendix A, for details)
____ Yes ____ No
6.1.13.2 Supplied by Bidder (If ''Yes'', attach REA Form 397g, Performance Specification for Line Concentrators)
____ Yes ____ No
6.2. *Data on Lines Required Range Extension*
6.2.1 Number of non-pay station lines having a loop resistance, including the telephone set, as follows:

	No. of lines
1901–3200 ohms	_____
3201–3600 ohms	_____

6.2.2 Number of pay station lines having loop resistance, excluding the telephone set, greater than:

	No. of lines
1200 ohms (For Prepay)	_____
1000 ohms (For Semi-Postpay	_____

Operation).
6.2.3 Range extension equipment is to be provided:
6.2.3.1 Loop Extenders: Total Quantity _____
By Bidder—Quantity _____
By Owner—Quantity _____
(Explain in Item 16, Appendix A)
6.2.3.2 VF Repeaters: Total Quantity _____
By Bidder—Quantity _____
(Bidder must have information on loading and cable size.)
By Owner—Quantity _____
(Explain in Item 16, Appendix A)
6.2.3.3 Range extension may be furnished as an extended range line circuit at the option of the supplier. If this option is used, the quantities of loop extenders and VF repeaters will be different from the quantities listed above (see Item 6.1,a, Appendix C).
____ Yes ____ No

7. Traffic Data-Line Originating and Terminating Traffic

7.1 Originating Line Traffic—Estimated per Busy Hour (Includes all Lines Associated With RST's):

	(a) CCS per Main Station	(b) No. of Main Stations	(axb) Total CCS	No. of Lines Required[1]
Ind.—Res	_____	_____	_____	_____
Ind.—Bus	_____	_____	_____	_____
Special Lines	_____	_____	_____	_____
Pay Station	_____	_____	_____	_____
Telco Official	_____	_____	_____	_____
Wire Chief	_____	_____	_____	_____
No. Htg. or PBX	_____(2)	_____(3)	_____	_____
WATS	_____	_____	_____	_____
Data Service	_____	_____	_____	_____
911 Emerg. Service	_____	_____	_____	_____
Total		_____	_____	_____(4)
		(c)	(d)	(e)

[1] See Appendix A, Item 6.1.
[2] This figure is the CCS per PBX trunk.
[3] This figure is the number of PBX trunks.
[4] This is the total number of line equipments required. The number to be provided will be determined by the equipment design of the system of the selected bidder. See Appendix C, Item 3.1.1.2.

7.2 Average Originating CCS per Line per Busy Hour
(d)/(e)=____/ ____=____ CCS/Line
This office shall be engineered to handle an initial average originating busy hour traffic of ____ CCS per line. It is anticipated that the average originating busy hour traffic will increase to ____ CCS per line.
Originating Traffic Attributed to Host Only ____ CCS/Line
7.3 Terminating Traffic—Estimated CCS per Busy Hour
It is assumed that the total CCS for terminating traffic is the same as for originating traffic. Since digital switch networks are on a terminal per line basis, the terminating CCS per line will be the same as the originating CCS per line as shown in Item 7.2, Appendix A.
Terminating Traffic Attributed to Host Only ____ CCS/Line
7.4 Percent of Pushbutton Lines ____
7.5 Anticipated Ultimate Capacity (20 years)

7.5.1 Subscriber Lines
Host _____ (Incl. DDI Concentrator Lines)
RST 1 _____
RST 2 _____
RST 3 _____
Total _____

* * * * *

10. Miscellaneous Operating Features

10.1 *Busy Verification*
10.1.1 By dedicated trunk from toll operator: ____
10.1.1.1 One-Way, Inward ____
10.1.1.2 Two-Way (Busy verification inward, intercept outward) ____
10.1.2 By prefix digit over intertoll trunk ____
(Indicate digit(s) dialed) ____
10.1.3 Access by Switchman
10.1.3.1 Dedicated Trunk ____
10.1.3.2 Multiple of Operator Trunk ____
10.2 *Intercept Facilities*
10.2.1 Vacant code, disconnected number, and unassigned number intercept shall be: (Check One)
By recorded announcement:
Without cut-through to operator ____
With cut-through to operator ____
By operator ____
10.2.2 Changed number intercept shall be: (Check One)
By recorded announcement:
Without cut-through to operator ____
With cut-through to operator ____
By operator ____
By automatic intercept system (AIS) in distant office ____
10.2.3 Method of Reaching Operator, if required:
Separate trunk group ____
Regular interoffice toll trunks with idle trunk selecting over at least three trunks when three or more toll trunks are equipped ____
10.2.4 Number of separate intercept trunk circuits ____
10.3 *Line Load Control*
10.3.1 Line load control facilities are:
____ Required ____ Not Required
(Explain in Item 16, Appendix A)
10.4 *Service Observing Facilities*
10.4.1 Service observing facilities are:
____ Required ____ Not Required
(Explain in Item 16, Appendix A)
10.5 *Hotel-Motel Arrangements*
10.5.1 Hotel-motel arrangements for operation of message registers at the subscriber's premises are:
____ Required ____ Not Required
(Explain in Item 16, Appendix A)
10.5.1.1 How are message registers to be activated?
Line Reversal ____
Third Wire ____
Other ____
(Explain in Item 16, Appendix A)
10.6 *Nailed-Up Connections*
____ Required ____ Not Required
(Explain in Item 16, Appendix A)
10.7 *Vertical Services:* (RST Lines are Included)

	Initially	*Ultimate*
10.7.1 Call Waiting—No. of Lines	_____	_____
10.7.2 Call Forwarding—No. of Lines	_____	_____
____Local ____Remote		
(Explain in Item 16, Appendix A).		
10.7.3 Abbreviated Dialing No. of Lines	_____	_____
No. of Codes per Line ____for ____Lines		
No. of Codes per Line ____for ____Lines		
10.7.4 Three-Way Calling—No. of Lines	_____	_____
CCS Per Line	_____	_____

10.7.5 Other ____
(Explain in Item 16, Appendix A)

* * * * *

Appendix B to 7 CFR 1755.522—[Amended]

4. Appendix B to 7 CFR 1755.522 is amended by removing items 1.2 and 1.3 and redesignating items 1.4 through 1.9 as items 1.2 through 1.7, respectively.

5. Appendix C to 7 CFR 1755.522 is amended by revising item 3.1.3.1 to read as follows:

Appendix C to 7 CFR 1755.522—Specifications for Digital, Stored Program Controlled Central Office Equipment Detailed Requirements—Bidder Supplied Information

* * * * *

3.1.3.1 The number of directory numbers provided shall be based on the total directory numbers required (Item 6.1.11, appendix A), as modified by the memory increment of the proposed system.

* * * * *

Dated: October 30, 1995.

Jill Long Thompson,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–27395 Filed 12–14–95; 8:45 am]

BILLING CODE 3410–15–P—M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 440

[Docket No. EE–RM–94–401]

Weatherization Assistance Program for Low-Income Persons

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is publishing a rule finalizing amendments to the regulations for the Weatherization Assistance Program for Low-Income Persons that changed the formula used to distribute funds among the States under the Program.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Greg Reamy, Weatherization Assistance Program Division, U.S. Department of Energy, Mail Stop EE–532, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 426–1698.

SUPPLEMENTARY INFORMATION: DOE issued an interim final rule on June 5, 1995 (60 FR 29469) that amended the formula used to distribute funds among the States under the Weatherization Assistance Program. Those changes were based on direction in the Conference Report on the Department of Interior and Related Agencies Appropriations Act of 1995 which accompanied Public Law 103–332. DOE received no comments on the interim final rule. Accordingly, the interim final rule is adopted as a final rule without change.

List of Subjects in 10 CFR Part 440

Definitions and allocation of funds.

Issued in Washington, DC on December 8, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

10 CFR Part 440—Weatherization Assistance Program for Low-Income Persons

Under the authority of 42 U.S.C. 6861–6871 and 42 U.S.C. 7191, the interim final rule amending 10 CFR Part 440, which was published on June 5, 1995 (60 FR 29469), is adopted as a final rule without change.

[FR Doc. 95–30591 Filed 12–14–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–112; Special Conditions No. 25–ANM–108]]

Special Conditions: Gulfstream Aerospace Corporation, Model Gulfstream V, High Altitude Operations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; correction.

SUMMARY: In the October 17, 1995, issue of the Federal Register, the Federal Aviation Administration (FAA) published final special conditions No. 25–ANM–108 for the Gulfstream Aerospace Corporation, Model Gulfstream V airplane (High Altitude Operations). The special conditions as published contain two errors; an incorrect paragraph reference, and a mistype made by the Federal Register. This document corrects those errors.

EFFECTIVE DATE: November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald Lakin, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056, telephone (206) 227–1187.

Adoption of the Correction

Special Conditions No 25–ANM–108, published in the Federal Register on October 17, 1995 (60 FR 53691) is corrected as follows:

On page 53691, column 3, under ''Novel or Unusual Design Features,'' paragraph 4, second sentence, remove ''grown'' and substitute ''growth'' in its place.

On page 53693, column 3, under ''4 Pressurization,'' subparagraph (c), remove the reference to ''paragraphs d.1. and d.2.'' and substitute ''paragraph 4(a) and 4(b)'' in its place.

Issued in Renton, Washington, on December 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–30552 Filed 12–14–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–75–AD; Amendment 39–9450; AD 95–25–05]

Airworthiness Directives; Beech Model 400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400A airplanes, that requires an inspection to verify if the securing rivet is installed on the rod end of the control push rods of the spoiler flight control system, an inspection to verify if the jam nut is secure on the opposite end of the rod end, and repair of any discrepancy. This amendment is prompted by a report of loss of roll control on the co-pilot's control wheel shortly after takeoff due to a rivet missing from the control push rod. The actions specified by this AD are intended to ensure that the push rod rivets are installed. Missing control push rod rivets could result in the disengagement of the push rod end from the push rod tube; this could lead to loss of roll control and subsequent reduced controllability of the airplane after takeoff.

DATES: Effective January 16, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

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 Beech Model 400A airplanes was published in the Federal Register on August 10, 1995 (60 FR 40782). That action proposed to require a one-time detailed visual inspection to verify if the securing rivet is installed on the push rods of the spoiler flight control system. That action also proposed to require an inspection to verify if the jam nut is secure on the opposite rod end, and repair of any discrepancy.

No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 96 Model 400A airplanes of the affected design in the worldwide fleet. The FAA estimates that 73 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $35,040, or $480 per airplane.

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

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a

''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–25–05 Beech Aircraft Corporation: Amendment 39–9450. Docket 95–NM–75–AD.

Applicability: Model 400A airplanes, serial numbers RK–1 through RK–96 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane after takeoff, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, perform a detailed visual inspection to verify if the securing rivet is installed on the control push rods of the spoiler flight control system, and an inspection to verify if the jam nut is secure on the opposite rod end, in accordance with Beechcraft Safety Communique 400A–113, dated March 1995. If any discrepancy is found, prior to further flight, repair in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

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

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

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

(d) The inspections shall be done in accordance with Beechcraft Safety Communique 400A–113, dated March 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register , 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 16, 1996.

Issued in Renton, Washington, on November 30, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30533 Filed 12–14–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–76–AD; Amendment 39–9451; AD 95–25–06]

Airworthiness Directives; Beech Model 400, 400A, and 400T (Military T–1A) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400, 400A, and 400T (military T–1A) airplanes, that requires modification of the standby instrument lighting system. This amendment is prompted by a report that, due to the design of the standby instrument lighting system, the lighting for the standby instruments dimmed to an unacceptable level when the main electrical power was turned off. The actions specified by this AD are intended to ensure that the standby instrument lighting system adequately illuminates the standby instrument, if normal electrical power is lost or is turned off as a result of fire or smoke in the cockpit.

DATES: Effective January 16, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harvey Nero, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4137; fax (316) 946–4407.

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 Beech Model 400, 400A, and 400T (military T–1A) airplanes was published in the Federal Register on August 28, 1995 (60 FR 44450). That action proposed to require modification of the standby instrument lighting system.

No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 189 Model 400, and 400T airplanes of the affected design in the worldwide fleet. The FAA estimates that 189 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of the required parts will range from $21 to as much as $471 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $72,009 (or $381 per airplane) and $157,059 (or $831 per airplane).

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

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–25–06 Beech Aircraft Corporation: Amendment 39–9451. Docket 95–NM–76–AD.

Applicability: Model 400 airplanes, serial number RJ–61; 400A airplanes, serial numbers RK–1 through RK–80 inclusive; and 400T (military T–1A) airplanes, serial numbers TT–1 through TT–108 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the standby instrument lighting system adequately illuminates the standby instrument, if normal electrical power is lost or is turned off as a result of a fire or smoke in the cockpit, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, modify the standby instrument lighting system in accordance with Beechcraft Service Bulletin 2563, dated February 1995.

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

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

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

(d) The modification shall be done in accordance with Beechcraft Service Bulletin 2563, dated February 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 16, 1996.

Issued in Renton, Washington, on November 30, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–30532 Filed 12–14–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–07–AD; Amendment 39–9445; AD 95–25–01]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires various modifications and terminating actions for the passenger door, and repair, if necessary. This amendment requires additional inspections, and replacement of certain parts, if necessary. This amendment also provides for optional terminating action for certain inspections. This amendment is prompted by reports of excessive gaps between lockout cams and crank stops, which resulted in broken power assist triggers. The actions specified by this AD are intended to prevent broken power assist triggers, which could result in an inoperative door opening system during an emergency evacuation.

DATES: Effective January 16, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA),

Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Boffo, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2780; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91–07–09, amendment 39–6951 (56 FR 12111, March 22, 1991), which is applicable to certain Boeing Model 757 series airplanes, was published in the Federal Register on April 3, 1995 (60 FR 16815). The action proposed to continue to require various inspections and modifications of certain mechanisms of the passenger doors, and replacement of certain parts, if necessary. Additionally, that action proposed to require repetitive inspections to detect worn, damaged, or cracked power assist triggers, repair of worn triggers, and replacement, if necessary; repetitive measurements of the clearance between the lockout cam and the crank stop; and replacement of the lockout cams, if necessary.

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

Two commenters request that the FAA include a provision for optional terminating action for the requirement to inspect the emergency power assist triggers, as specified in paragraph (d) of the proposal. One commenter states that repetitive actions should only be necessary if there is significant evidence that doors inspected/rectified in accordance with the alert service bulletin deteriorate with time. This commenter points out that paragraph I.D. of the alert service bulletin (that is referenced in the proposal as the appropriate source of service information) indicates that once the door is rigged correctly, the inspections can be discontinued. A second commenter states that Boeing has indicated that modification of the subject lockout mechanism would terminate the proposed repetitive inspections.

The FAA does not concur. Although the Boeing alert service bulletin would allow termination of the repetitive inspections of the power assist trigger if the lockout cam is within specified measurements, the FAA finds that the requirement to repetitively inspect the emergency power assist triggers, as required by paragraph (d) of the final rule cannot be terminated. Failure of the lockout cam is not the only possible failure mode that could result in failure of the emergency power assist trigger, e.g., the power assist trigger function could fail in the event of a door mis-sequencing while being opened.

Two commenters request that the FAA include a provision for optional terminating action for the requirement to repetitively measure the clearance between the lockout cam and the crank stop, as specified in paragraph (e), of the proposal. One of the commenters, Boeing, clarifies that the intent of the alert service bulletin is to specify that no further action is necessary if the clearance between the lockout cam and crank stop is within specified limits and the emergency power assist trigger is not damaged or cracked. Boeing indicates that a phrase stating that ''if the clearance is within limits, no more work is necessary'' was omitted inadvertently from paragraph I.D. of the alert service bulletin. Boeing adds that no further incidents of failure of the emergency power assist triggers have been reported. Therefore, Boeing recommends that the FAA revise paragraphs (e)(1) and (e)(2) of the final rule accordingly.

The FAA concurs with the commenters' requests. The FAA has determined that measurement of the clearance between the lockout cam and the crank stop need not be accomplished on a repetitive basis. The FAA has revised paragraph (e) of the final rule to remove the requirement to measure repetitively.

Two commenters request that the actions specified in Boeing Telex M–7272–94–6665, ''New Redesigned Girt Bar Mechanism and Emergency Power Assist (EPA) System,'' be considered terminating action for the proposed repetitive inspections. The commenters do not justify this request. The FAA does not concur with the commenters' request. The FAA has confirmed with Boeing that the telex referenced by the commenters is an explanation of proposed design changes that may possibly be made in the future. However, these changes could constitute a major redesign to the escape system and may not be offered as a solution for in-service airplanes. The FAA has determined that, since an unsafe condition exists, the inspections must be conducted to ensure continued safety. Furthermore, the FAA does not consider it appropriate to delay this rulemaking action until such time that these design changes are approved and available.

Three commenters request that, if repetitive inspections will be required, the FAA extend the repetitive inspection intervals to coincide with regularly scheduled ''C'' checks (i.e., from the proposed 6 months to 8 months). The FAA does not concur with the commenters' request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered the safety implications and the practical aspect of performing the required inspections within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. In consideration of these items, as well as the reports of broken power assist triggers, the FAA has determined that 6 months represents the maximum interval of time allowable wherein the inspections can reasonably be accomplished and an acceptable level of safety can be maintained. However, paragraph (f) of the final rule does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

The FAA has revised the economic impact information, below, to include cost estimates for accomplishment of the actions required currently by AD 91–07–09.

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.

There are approximately 578 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 323 airplanes (6 passenger doors per airplane) of U.S. registry will be affected by this AD.

The actions that are currently required by AD 91–07–09 take approximately 51 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required by AD 91–07–09 is estimated to be $988,380, or $3,060 per airplane.

The new actions that are required by this new AD will take approximately 12 work hours (2 work hours per passenger door) per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the new requirements of this AD is estimated to

be $232,560, or $720 per airplane ($120 per door), per inspection cycle.

Should an operator be required to accomplish the replacement of power assist triggers, it will take approximately 18 work hours per airplane (3 work hours per passenger door) to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,800 per airplane ($300 per passenger door). Based on these figures, the cost impact of the replacement action is estimated to be $2,880 per airplane ($480 per passenger door).

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6951 (56 FR 12111, March 22, 1991), and by adding a new airworthiness directive (AD), amendment 39–9445, to read as follows:

95–25–01 Boeing: Amendment 39–9445. Docket 95–NM–07–AD. Supersedes AD 91–07–09, Amendment 39–6951.

Applicability: Model 757 series airplanes, as listed in any of the following service bulletins: Boeing Service Bulletin 757–52–0042, dated March 30, 1989; Boeing Service Bulletin 757–52–0042, Revision 1, dated April 26, 1990; and Boeing Alert Service Bulletin 757–52A0023, Revision 3, dated November 18, 1993; 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 use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure proper operation of the door opening system during an emergency evacuation, accomplish the following:

(a) For airplanes identified as Group 1 in Boeing Service Bulletin 757–52–0042, dated March 30, 1989, and Revision 1, dated April 26, 1990: Within 350 flight hours after January 6, 1990 (the effective date of AD 89–25–09, amendment 39–6407), accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD, in accordance with either service bulletin. Any interference or improper clearance detected during any inspection required by this paragraph must be repaired, prior to further flight, in accordance with either service bulletin.

(1) Modify the forward right-hand passenger door.

(2) Inspect all passenger doors for evidence of interference between the trigger support housing and the upper hinge arm.

(3) Inspect all passenger doors for proper clearance between the power assist trigger and the door and fuselage skin.

(b) For all airplanes identified in Boeing Service Bulletin 757–52–0042, dated March 30, 1989, and Revision 1, dated April 26, 1990: Within 350 flight hours after January 6, 1990 (the effective date of AD 89–25–09, amendment 39–6407), and thereafter at intervals not to exceed 6 months, accomplish paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD, in accordance with either service bulletin. Any damage, improper adjustment, or improper operation detected during any of the inspection required by this paragraph must be repaired, prior to further flight, in accordance with either service bulletin.

(1) Inspect the forward doors for proper adjustment of the lockout mechanism of the door emergency power assist system.

(2) Inspect all passenger door emergency power assist triggers for wear marks, damage, or fracture.

(3) Inspect trigger spring cylinders for proper operation.

(4) Inspect roller arms for damage.

(c) For all airplanes identified in Boeing Service Bulletin 757–52–0042, Revision 1, dated April 26, 1990: Within 18 months after April 29, 1991 (the effective date of AD 91–07–09, amendment 39–6951), accomplish paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, in accordance with Section III, Part III, of the service bulletin. Any damage, defect, improper adjustment, or improper operation detected during any inspection required by this paragraph must be repaired, prior to further flight, in accordance with the service bulletin. Accomplishment of the actions required by this paragraph constitutes terminating action for the periodic inspections required by paragraph (b) of this AD.

(1) On forward doors, install the lockout link and inspect the lockout mechanism for proper adjustment.

(2) On all passenger doors, install the new trigger guard, and inspect the emergency power assist triggers for wear marks, damage, or fracture.

(3) On all passenger doors, modify the trigger spring cylinder end cap and inspect the spring cylinder for proper operation.

(4) On all passenger doors, inspect roller arms for damage. .

(d) For all airplanes identified in Boeing Alert Service Bulletin 757–52A0023, Revision 3, dated November 18, 1993: Within 6 months after the effective date of this AD, perform an inspection to detect wear marks, damage, or cracking on the upper surface of the emergency power assist triggers at all passenger doors, in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 6 months.

(1) If any wear mark is detected, prior to further flight, repair in accordance with the alert service bulletin.

(2) If any damage or cracking is detected, prior to further flight, replace the power assist triggers in accordance with the alert service bulletin.

(e) For all airplanes identified in Boeing Alert Service Bulletin 757–52A0023, Revision 3, dated November 18, 1993: Within 6 months after the effective date of this AD, measure the clearance between the lockout cam and the crank stop, in accordance with the alert service bulletin.

(1) If the clearance between the lockout cam and the crank stop is within the limits specified in the alert service bulletin, no further action is required by this paragraph.

(2) If the clearance between the lockout cam and the crank stop is beyond the limits

specified in the alert service bulletin, prior to further flight, accomplish the actions specified by either paragraph (e)(2)(i) or (e)(2)(ii) of this AD.

(i) Adjust the lockout cam until the correct clearance is obtained, in accordance with the alert service bulletin. Or

(ii) If the correct clearance cannot be obtained by adjusting the lockout cam, replace the lockout cam in accordance with the alert service bulletin.

(f) 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 Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

(g) 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.

(h) The actions shall be done in accordance with Boeing Service Bulletin 757–52–0042, Revision 1, dated April 26, 1990; and Boeing Alert Service Bulletin 757–52A0023, Revision 3, dated November 18, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on January 16, 1996.

Issued in Renton, Washington, on November 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29302 Filed 12–14–95; 8:45 am]

BILLING CODE 4910–13–U]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8631]

RIN 1545–AT79

Notice of Significant Reduction in the Rate of Future Benefit Accrual

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance concerning the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), relating to defined benefit plans and to individual account plans that are subject to the funding standards of section 302 of ERISA. It requires the plan administrator to give notice of certain plan amendments to participants in the plan and certain other parties. 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 published in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Betty J. Clary, (202) 622–6070 (not a toll-free number).

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 collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1477. Responses to this collection of information are required under section 204(h) of ERISA upon the adoption of certain amendments to pension plans.

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.

For further information concerning this collection of information, and where to submit comments on the collection 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.

The regulations do not involve any issue of confidentiality.

Background

This document contains temporary regulations that provide guidance on section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. 1054(h). Section 204(h) of ERISA was added by section 11006(a) of the Single-Employer Pension Plan Amendments Act of 1986 (Title XI of Public Law 99–272), and was amended by section 1879(u)(1) of the Tax Reform Act of 1986, Public Law 99–514. Pursuant to section 101(a) of the Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt, the Secretary of the Treasury has authority to issue regulations under parts 2 and 3 of subtitle B of title I of ERISA (including section 204 of ERISA). Under section 104 of Reorganization Plan No. 4, the Secretary of Labor retains enforcement authority with respect to parts 2 and 3 of subtitle B of title I of ERISA, but, in exercising such authority, is bound by the regulations issued by the Secretary of the Treasury.

Prior guidance relating to the requirements of section 204(h) has been provided in Rev. Proc. 89–65 (1989–2 C.B. 786) and Rev. Proc. 94–13 (1994–1 C.B. 566), and under Notice 87–21 (1987–1 C.B. 458), Notice 88–131 (1988–2 C.B. 546), Notice 89–92 (1989–2 C.B. 410), and Notice 90–73 (1990–2 C.B. 353). These temporary regulations provide further guidance, in the form of Questions and Answers.

The provisions in this Treasury Decision are needed immediately to provide guidance to the public with respect to the notice requirements of section 204(h) of ERISA. Issues related to section 204(h) arise in connection with a broad range of plan amendments, including amendments prompted by recent changes in the law. Therefore, it is found impracticable and contrary to the public interest to issue this Treasury decision with prior notice under 5 U.S.C. 553(b).

Explanation of Provisions

Section 204(h) of ERISA applies if a defined benefit plan or an individual account plan that is subject to the funding standards of section 302 of ERISA is amended to provide for a significant reduction in the rate of future benefit accrual. It requires the plan administrator to give written notice of the amendment to participants in the plan, alternate payees, and employee organizations representing participants in the plan (or to a person designated, in writing, to receive the notice on behalf of a participant, alternate payee, or employee organization). The notice must set forth the plan amendment and its effective date and must be provided after adoption of the amendment and not less than 15 days before the effective date of the amendment.

A plan amendment that is subject to the notice requirements of section 204(h) of ERISA may also be subject to additional reporting and disclosure requirements under title I of ERISA,

such as the requirement to provide a summary of material modifications. See sections 102(a) and 104(a) of ERISA, 29 U.S.C. 1022 and 1024, and the regulations thereunder for guidance on when a summary of material modifications must be provided. Section 204(h) notice must be provided at least 15 days in advance of the effective date of an amendment significantly reducing the future rate of benefit accrual, even though a summary of material modifications describing the amendment is provided at a later date.

Section 204(h) of ERISA does not apply to an amendment that does not affect the rate of future benefit accrual. These regulations clarify that an amendment to a defined benefit plan that does not affect the annual benefit commencing at normal retirement age does not affect the rate of future benefit accrual for purposes of section 204(h). Accordingly, the regulations provide that the plan administrator of a defined benefit plan is not required to provide section 204(h) notice with respect to an amendment that does not affect the future annual benefit payable at normal retirement age, even if the amendment affects other forms of payment (such as a single sum distribution) or benefits commencing at a date other than normal retirement age (such as an early retirement benefit).

The regulations also clarify that an amendment to an individual account plan that does not change the amount of future allocations to participants' accounts does not affect the rate of future benefit accrual for purposes of section 204(h) of ERISA. Accordingly, section 204(h) notice is not required with respect to any such amendment.

Even if an amendment affects the rate of future benefit accrual, section 204(h) notice is required only if the amendment significantly reduces the rate of future benefit accrual. Under the regulations, whether an amendment significantly reduces the rate of future benefit accrual is to be determined based on reasonable expectations taking into account all relevant facts and circumstances.

The regulations delegate to the Commissioner of Internal Revenue the authority to provide that section 204(h) notice need not be provided with respect to plan amendments that the Commissioner determines are necessary or appropriate, as a result of a change in federal law, to maintain compliance with the law. The Commissioner may exercise this authority only through the publication of revenue rulings, notices, and other guidance in the Internal Revenue Bulletin.

In situations in which section 204(h) notice is required with respect to an amendment, the regulations provide guidance on the participants, alternate payees, and employee organizations to whom the notice must be provided. Specifically, the regulations provide that the plan administrator is not required to provide notice to a participant or alternate payee whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment. For example, notice need not be provided to participants (such as former employees with a vested benefit under the plan) who, prior to the amendment, were not entitled to accrue future benefits under the plan. Moreover, under the regulations, section 204(h) notice is not required to be provided to an employee organization unless it represents one or more participants to whom section 204(h) notice is required to be provided. Finally, the regulations clarify that employees who have not yet become participants in the plan are not taken into account for any purpose under section 204(h) of ERISA.[1] Thus, the plan administrator is not required to provide section 204(h) notice to such employees.

The regulations provide that a plan that is terminated in accordance with title IV of ERISA is deemed to satisfy section 204(h) not later than the date of termination established under section 4048 of ERISA. Accordingly, section 204(h) does not require that any further benefits accrue under the plan after that date. However, if that date of termination is deferred, benefits continue to accrue until the deferred date of termination absent an effective cessation of accruals as of an earlier specified date.

If the plan is not amended to significantly reduce the rate of future benefit accrual prior to the termination, section 204(h) notice is not required. However, the regulations also affirm that section 204(h) applies to an amendment that is effective prior to the termination date and clarify that, if section 204(h) notice is required, it can be provided either with or as part of the notice of intent to terminate or separately.

The regulations also provide two rules applicable in situations in which a plan administrator was required to provide section 204(h) notice with respect to an amendment but failed to provide timely notice to some of the parties to whom notice was required to be provided. The first rule applies when the plan administrator fails to provide timely notice with respect to more than a de minimis percentage of the parties to whom section 204(h) notice was required. In such a situation, the amendment becomes effective in accordance with its terms with respect to a participant to whom notice was required if the participant was provided with timely notice and any employee organization representing the participant was also provided with timely notice. The amendment also becomes effective in accordance with its terms with respect to an alternate payee to whom notice was required if the alternate payee was provided with timely notice.

The second rule applies in a situation in which the plan administrator made a good faith effort to comply with section 204(h) of ERISA with respect to an amendment, failed to provide timely section 204(h) notice to no more than a de minimis percentage of the parties to whom notice was required, and provided timely notice to all employee organizations with respect to whom section 204(h) notice was required. In such a situation, if the plan administrator, promptly upon discovery of the omission, provides section 204(h) notice to all parties who were required to be provided such notice but were omitted, the plan amendment becomes effective in accordance with its terms with respect to all parties to whom section 204(h) notice was required, including those who did not receive notice prior to discovery of the omission.

Effective Dates

These temporary regulations are effective for amendments adopted on or after December 15, 1995, and amendments effective by their terms on or after January 2, 1996.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue 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.

[1] This is not intended to affect the rights of employees under other provisions of ERISA.

Drafting Information: The principal author of these regulations is Betty J. Clary, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), 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.

Adoption of 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 for Section 1.411(d)–6T to read as follows:

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

Section 1.411(d)–6T also issued under Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt. * * *

Par. 2. § 1.411(d)–6T is added to read as follows:

§ 1.411(d)–6T Section 204(h) notice.

Q–1: What are the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA)?

A–1: (a) *Requirements of section 204(h).* Section 204(h) of ERISA generally requires written notice of an amendment to certain plans that provides for a significant reduction in the rate of future benefit accrual. Section 204(h) generally requires the notice to be provided to plan participants, alternate payees, and employee organizations. The plan administrator must provide the notice after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment.

(b) *Other notice requirements.* Other provisions of law may require that certain parties be notified of a plan amendment. See, for example, sections 102 and 104 of ERISA, and the regulations thereunder, for the requirements relating to summary plan descriptions and summaries of material modifications.

Q–2: To which plans does section 204(h) of ERISA apply?

A–2: Section 204(h) of ERISA applies to defined benefit plans subject to part 2 of subtitle B of title I of ERISA and to individual account plans subject to such part 2 and to the funding standards of section 302 of ERISA. Accordingly, individual account plans that are not subject to the funding standards of section 302, such as profit-sharing and stock bonus plans, are not subject to section 204(h).

Q–3: *What is section 204(h) notice?*

A–3: *Action 204(h) notice* is notice that complies with section 204(h) of ERISA and the rules in this section.

Q–4: For which amendments is section 204(h) notice required?

A–4: (a) *In general.* Section 204(h) notice is required for an amendment to a plan described in Q&A–2 of this section that provides for a significant reduction in the rate of future benefit accrual.

(b) *Delegation of authority to Commissioner.* The Commissioner of Internal Revenue may provide through publication in the Internal Revenue Bulletin of revenue rulings, notices, or other documents (see § 601.601(d)(2) of this chapter) that section 204(h) notice need not be provided for plan amendments otherwise described in paragraph (a) of this Q&A–4 that the Commissioner determines to be necessary or appropriate, as a result of changes in the law, to maintain compliance with the requirements of the Internal Revenue Code of 1986, as amended (Code) (including requirements for tax qualification), ERISA, or other applicable federal law.

Q–5: What is an amendment that affects the rate of future benefit accrual for purposes of section 204(h) of ERISA?

A–5: (a) *In general*—(1) *Defined benefit plans.* For purposes of section 204(h) of ERISA, an amendment to a defined benefit plan affects the rate of future benefit accrual only if it is reasonably expected to change the amount of the future annual benefit commencing at normal retirement age.

(2) *Individual account plans.* For purposes of section 204(h), an amendment to an individual account plan affects the rate of future benefit accrual only if it is reasonably expected to change the amounts allocated in the future to participants' accounts. Changes in the investments or investment options under an individual account plan are not taken into account for this purpose.

(b) *Determination of rate of future benefit accrual.* In accordance with paragraph (a) of this Q&A–5, the rate of future benefit accrual is determined without regard to optional forms of benefit (other than the annual benefit described in paragraph (a) of this Q&A–5), early retirement benefits, or retirement-type subsidies, within the meaning of such terms as used in section 411(d)(6) of the Code (section 204(g) of ERISA). The rate of future benefit accrual is also determined without regard to ancillary benefits and other rights or features as defined in § 1.401(a)(4)–4(e).

(c) *Examples.* These examples illustrate the rules in this Q&A–5:

Example 1. A plan is amended with respect to future benefit accruals to eliminate a right to commencement of a benefit prior to normal retirement age. Because the amendment does not affect the annual benefit commencing at normal retirement age, it does not reduce the rate of future benefit accrual for purposes of section 204(h).

Example 2. A plan is amended to modify the assumptions used in converting an annuity form of distribution to a single sum form of distribution. The use of these modified assumptions results in a lower single sum. Because the amendment does not affect the annual benefit commencing at normal retirement age, it does not reduce the rate of future benefit accrual for purposes of section 204(h).

Q–6: What plan provisions are taken into account in determining whether there has been a reduction in the rate of future benefit accrual?

A–6: (a) *Plan provisions taken into account.* All plan provisions that may affect the rate of future benefit accrual of participants or alternate payees must be taken into account in determining whether an amendment provides for a significant reduction in the rate of future benefit accrual. Such provisions include, for example, the dollar amount or percentage of compensation on which benefit accruals are based; in the case of a plan using the permitted disparity under section 401(l) of the Code, the amount of disparity between the excess benefit percentage or excess contribution percentage and the base benefit percentage or base contribution percentage (all as defined in section 401(l)); the definition of service or compensation taken into account in determining an employee's benefit accrual; the method of determining average compensation for calculating benefit accruals; the definition of normal retirement age in a defined benefit plan; the exclusion of current participants from future participation; benefit offset provisions; minimum benefit provisions; the formula for determining the amount of contributions and forfeitures allocated to participants' accounts in an individual account plan; and the actuarial assumptions used to determine contributions under a target benefit plan (as defined in § 1.401(a)(4)–8(b)(3)(i)).

(b) *Plan provisions not taken into account.* Plan provisions that do not

affect the rate of future benefit accrual of participants or alternate payees are not taken into account in determining whether there has been a reduction in the rate of future benefit accrual. For example, provisions such as vesting schedules or optional forms of benefit (other than the annual benefit described in Q&A–5(a) of this section) are not taken into account.

(c) *Examples.* The following example illustrates the rules in this Q&A–6:

Example. A defined benefit plan provides a normal retirement benefit equal to 50% of final average compensation times a fraction (not in excess of one), the numerator of which equals the number of years of participation in the plan and the denominator of which equals 20. A plan amendment that changes the numerator or denominator of that fraction must be taken into account in determining whether there has been a reduction in the rate of future benefit accrual.

Q–7: What is the basic principle used in determining whether an amendment provides for a significant reduction in the rate of future benefit accrual for purposes of section 204(h) of ERISA?

A–7: Whether an amendment provides for a significant reduction in the rate of future benefit accrual for purposes of section 204(h) of ERISA is determined based on reasonable expectations taking into account the relevant facts and circumstances at the time the amendment is adopted.

Q–8: Are employees who have not yet become participants in a plan at the time an amendment to the plan is adopted taken into account for any purpose in applying section 204(h) of ERISA with respect to the amendment?

A–8: No. Employees who have not yet become participants in a plan at the time an amendment to the plan is adopted are not taken into account for any purpose in applying section 204(h) of ERISA with respect to the amendment. Thus, if section 204(h) notice is required with respect to an amendment, the plan administrator need not provide section 204(h) notice to such employees.

Q–9: If section 204(h) notice is required with respect to an amendment, must such notice be provided to participants or alternate payees whose rate of future benefit accrual is not reduced by the amendment?

A–9: (a) *In general.* A plan administrator need not provide section 204(h) notice to any participant whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment, nor to any alternate payee under an applicable qualified domestic relations order whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment. A plan administrator need not provide section 204(h) notice to an employee organization unless the employee organization represents a participant to whom section 204(h) notice is required to be provided.

(b) *Facts and circumstances test.* Whether a participant or alternate payee is described in paragraph (a) of this Q&A–9 is determined based on all relevant facts and circumstances at the time the amendment is adopted.

(c) *Examples.* The following examples illustrate the rules in this Q&A–9:

Example 1. Plan A is amended to reduce significantly the rate of future benefit accrual of all current employees who are participants in the plan. It is reasonable to expect based on the facts and circumstances that the amendment will not reduce the rate of future benefit accrual of former employees who are currently receiving benefits or that of former employees who are entitled to vested benefits. Accordingly, the plan administrator is not required to provide section 204(h) notice to such former employees.

Example 2. Assume in *Example 1* that Plan A also covers two groups of alternate payees. The alternate payees in the first group are entitled to a certain percentage or portion of the former spouse's accrued benefit, and for this purpose the accrued benefit is determined at the time the former spouse begins receiving retirement benefits under the plan. The alternate payees in the second group are entitled to a certain percentage or portion of the former spouse's accrued benefit, and for this purpose the accrued benefit was determined at the time the qualified domestic relations order was issued by the court. It is reasonable to expect that the benefits to be received by the second group of alternate payees will not be affected by any reduction in a former spouse's rate of future benefit accrual. Accordingly, the plan administrator is not required to provide section 204(h) notice to the alternate payees in the second group.

Example 3. Plan B covers hourly employees and salaried employees. Plan B provides the same rate of benefit accrual for both groups. The employer amends Plan B to reduce significantly the rate of future benefit accrual of the salaried employees only. At that time, it is reasonable to expect that only a small percentage of hourly employees will become salaried in the future. Accordingly, the plan administrator is not required to provide section 204(h) notice to the participants who are currently hourly employees.

Example 4. Plan C covers employees in Division M and employees in Division N. Plan C provides the same rate of benefit accrual for both groups. The employer amends Plan C to reduce significantly the rate of future benefit accrual of employees in Division M. At that time, it is reasonable to expect that in the future only a small percentage of employees in Division N will be transferred to Division M. Accordingly, the plan administrator is not required to provide section 204(h) notice to the participants who are employees in Division N.

Example 5. Assume the same facts as in *Example 4*, except that at the time the amendment is adopted, it is expected that soon thereafter Division N will be merged into Division M in connection with a corporate reorganization (and the employees in Division N will become subject to the plan's amended benefit formula applicable to the employees in Division M). In this instance, the plan administrator must provide section 204(h) notice to the participants who are employees in Division M and to the participants who are employees in Division N.

Q–10: Does a notice fail to comply with section 204(h) of ERISA if it contains a summary of the amendment and the effective date, without the text of the amendment itself?

A–10: No, the notice does not fail to comply with section 204(h) of ERISA merely because the notice contains a summary of the amendment, rather than the text of the amendment, if the summary is written in a manner calculated to be understood by the average plan participant and contains the effective date. The summary need not explain how the individual benefit of each participant or alternate payee will be affected by the amendment.

Q–11: How may section 204(h) notice be provided?

A–11: A plan administrator may use any method reasonably calculated to ensure actual receipt of the section 204(h) notice. First class mail to the last known address of the party is an acceptable delivery method. Likewise, hand delivery is acceptable. Section 204(h) notice may be enclosed along with other notice provided by the employer or plan administrator.

Q–12: If a plan administrator fails to provide section 204(h) notice to more than a de minimis percentage of participants and alternate payees to whom section 204(h) notice is required to be provided, will the plan administrator be considered to have complied with section 204(h) of ERISA with respect to participants and alternate payees who were provided with timely section 204(h) notice?

A–12: The plan administrator will be considered to have complied with section 204(h) of ERISA with respect to a participant to whom section 204(h) notice is required to be provided if the participant and any employee organization representing the participant were provided with timely section 204(h) notice. The plan administrator will be considered to have complied with section 204(h) with respect to an alternate payee to whom section 204(h) notice is required to be provided if the alternate payee was

provided with timely section 204(h) notice. Accordingly, the amendment will become effective in accordance with its terms with respect to those participants and alternate payees.

Q–13: Will a plan be considered to have complied with section 204(h) of ERISA if the plan administrator provides section 204(h) notice to all but a de minimis percentage of participants and alternate payees to whom section 204(h) notice must be provided?

A–13: The plan will be considered to have complied with section 204(h) of ERISA and the amendment will become effective in accordance with its terms with respect to all parties to whom section 204(h) notice was required to be provided (including those who did not receive notice prior to discovery of the omission), if the plan administrator—

(a) Has made a good faith effort to comply with the requirements of section 204(h);

(b) Has provided section 204(h) notice to each employee organization that represents any participant to whom section 204(h) notice is required to be provided;

(c) Has failed to provide section 204(h) notice to no more than a de minimis percentage of participants and alternate payees to whom section 204(h) notice is required to be provided; and

(d) Provides section 204(h) notice to those participants and alternate payees promptly upon discovering the oversight.

Q–14: How does section 204(h) of ERISA apply to a plan that is terminated in accordance with title IV of ERISA?

A–14: (a) *On and after termination date.* Notwithstanding paragraph (b) of this Q&A–14 or any other provisions of this section, a plan that is terminated in accordance with title IV of ERISA is deemed to have satisfied section 204(h) of ERISA not later than the termination date (or date of termination, as applicable) established under section 4048 of ERISA. Accordingly, section 204(h) would not require that any additional benefits accrue after such date.

(b) *Amendment effective before termination date.* An amendment that is effective before the termination date (or date of termination, as applicable) established under section 4048 of ERISA is subject to section 204(h). Accordingly, if such amendment provides for a significant reduction in the rate of future benefit accrual, the plan administrator must provide section 204(h) notice (either separately or with or as part of the notice of intent to terminate) with respect to the amendment. However, if a plan is not amended to reduce significantly the rate of future benefit accrual before the termination date (for example, the plan continues existing benefit accruals until the termination date), section 204(h) notice is not required.

Q–15: When does section 204(h) of ERISA become effective?

A–15: (a) *Statutory effective date.* With respect to defined benefit plans, section 204(h) of ERISA generally applies to plan amendments adopted on or after January 1, 1986. With respect to individual account plans, section 204(h) applies to plan amendments adopted on or after October 22, 1986.

(b) *Regulatory effective date.* This section applies to amendments adopted on or after December 15, 1995, and amendments effective by their terms on or after January 2, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, paragraph (c) is amended by adding to the table in numerical order the entry ''1.411(d)–6T * * * .1545–1477''.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 5, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–30416 Filed 12–12–95; 1:23 pm]

BILLING CODE 4830–01–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2621 and 2627

Limitation on Guaranteed Benefits in Single-Employer Plans; Disclosure to Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends Appendix A to the Limitation on Guaranteed Benefits regulation of the Pension Benefit Guaranty Corporation (''PBGC'') by adding the maximum guaranteeable pension benefit that may be paid by the PBGC with respect to a plan participant in a single-employer pension plan that terminates in 1996. The maximum guaranteeable benefit is computed in accordance with the formula in section 4022(b)(3) of the Employee Retirement Income Security Act of 1974, which provides that the maximum guaranteeable benefit is based on the contribution and benefit base determined under section 230 of the Social Security Act. The latter number is adjusted annually, and that adjustment automatically changes the dollar amount of the maximum guaranteeable benefit paid by PBGC. The effect of this amendment is to advise plan participants and beneficiaries of the increased maximum guaranteeable benefit for 1996. This rule also amends Appendix B to the PBGC's Disclosure to Participants regulation by adding information on 1996 maximum guaranteed benefit amounts. Plan administrators may, subject to the requirements of that regulation, include this information in participant notices.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 4022(b) of the Employee Retirement Income Security Act of 1974, as amended, (''ERISA'') provides for certain limitations on benefits guaranteed by the Pension Benefit Guaranty Corporation (''PBGC'') in terminating single-employer pension plans covered under Title IV of ERISA. One of the limitations set forth in section 4022(b)(3) is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant by the PBGC. Subparagraph (B) of section 4022(b)(3) provides that the amount of monthly benefit payable in the form of a life annuity beginning at age 65 shall not exceed ''$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [$13,200]''. This formula is also set forth in § 2621.3(a)(2) of the PBGC's regulation entitled Limitation on Guaranteed Benefits in Single-Employer Plans (29 CFR Part 2621).

Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) provides special rules for determining the contribution and benefit base for purposes of section 4022(b)(3)(B). Each year the Social Security Administration determines, and notifies the PBGC of, the contribution and benefit base to be used by the PBGC under these provisions.

The PBGC has been notified by the Social Security Administration that, under section 230 of the Social Security Act, $46,500 is the contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 1996. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR § 2621.3(a)(2) is: $750 multiplied by $46,500/$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC in 1996 is $2,642.05 per month in the form of a life annuity beginning at age 65. If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount will be the actuarial equivalent of $2,642.05 per month.

Appendix A to part 2621 lists the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in each year from 1974 through 1995. This amendment updates appendix A for plans that terminate in 1996.

Section 4011 of ERISA requires plan administrators of certain underfunded plans to provide notice to plan participants and beneficiaries of the plan's funding status and the limits of the PBGC's guarantee. The PBGC's Disclosure to Participants regulation (part 2627) implements the statutory notice requirement. This rule amends Appendix B to the PBGC's Disclosure to Participants regulation by adding information on 1996 maximum guaranteed benefit amounts. Plan administrators may, subject to the requirements of that regulation, include this information in participant notices.

Because the maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and these amendments make no change in its method of calculation but simply list 1996 maximum guaranteeable benefit amounts for the public's knowledge, general notice of proposed rulemaking is not required. Moreover, because the 1996 maximum guaranteeable benefit is effective, under the statute, at the time that the Social Security contribution and benefit base is effective, *i.e.*, January 1, 1996, and is not dependent on the issuance of this regulation, the PBGC finds that good cause exists for making these amendments effective less than 30 days after publication (5 U.S.C. 553).

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Parts 2621 and 2627

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, parts 2621 and 2627 of subchapter C, chapter XXVI, title 29, Code of Federal Regulations are hereby amended as follows:

PART 2621—LIMITATION ON GUARANTEED BENEFITS IN SINGLE-EMPLOYER PLANS

1. The authority citation for Part 2621 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b.

2. Appendix A to part 2621 is amended by adding a new entry to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

Appendix A to Part 2621—Maximum Guaranteeable Monthly Benefit

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 2621.3(a)(2) to a participant in a plan that terminated in that year:

Year	Maximum guaranteeable monthly benefit
* * * * *	
1996	2,642.05

PART 2627—DISCLOSURE TO PARTICIPANTS

3. The authority citation for Part 2627 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1311.

4. Appendix B to part 2627 is amended by adding a new entry to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

Appendix B to Part 2627—Table of Maximum Guaranteed Benefits

If a plan terminates in—	The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below:							
	Age 65		Age 62		Age 60		Age 55	
	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual
1996	$2,642.05	$31,704.60	$2,087.22	$25,046.64	$1,717.33	$20,607.96	$1,188.92	$14,267.04

Issued at Washington, DC this 11th day of December, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–30497 Filed 12–14–95; 8:45 am]

BILLING CODE 7708–01–P

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) by adding a new Table I–96 to appendix D. Table I–96 applies to any plan being terminated either in a distress termination or involuntarily by the PBGC with a valuation date falling in 1996, and is used to determine expected retirement ages for plan participants. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The regulation of the Pension Benefit Guaranty Corporation (''PBGC'') on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''). Under ERISA section 4041(c), plans wishing to terminate in a distress termination must value guaranteed benefits and benefit liabilities under the plan using formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA Section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Under § 2619.46, early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Subpart D of part 2619 sets forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendices D and E of part 2619 contain tables and examples to be used in determining the expected early retirement ages.

There are two sets of tables in appendix D. The first set, Selection of Retirement Rate Category (I–79 through I–95), is used to determine whether a participant has a low, medium, or high probability of retiring early. The second set of tables, Expected Retirement Ages for Individuals in the Low/Medium/High Categories (II–A, II–B, and II–C), is used to determine the expected retirement age after the probability of early retirement has been determined.

The first set of tables determines the probability of early retirement based on the year a participant would reach normal retirement age and the participant's monthly benefit at normal retirement age. The second set of tables establishes, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the normal retirement age under the plan. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

Tables I–79 through I–95 in appendix D establish retirement rate categories for the calendar years 1979 through 1995. The table for each year applies only to plans with valuation dates in that year. The PBGC updates these tables annually to reflect changes in the cost of living, etc. This document amends appendix D to add Table I–96 in order to provide an updated correlation, appropriate for calendar year 1996, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–96 will be used to value benefits in plans with valuation dates that occur during calendar year 1996.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 1996, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 1996. Moreover, because of the need to provide immediate guidance for the valuation of benefits under such plans, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making this amendment to the regulation effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, appendix D to part 2619 of subchapter C of chapter XXVI of title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. Appendix D to part 2619 is amended by adding Table I–96 as follows:

Appendix D—Tables Used To Determine Expected Retirement Age

* * * * *

TABLE I–96.—SELECTION OF RETIREMENT RATE CATEGORY

[For Plans with valuation dates after December 31, 1995, and before January 1, 1997]

Participant reaches NRA in year—	Participant's retirement rate category is—			
	Low[1] if monthly benefit at NRA is less than—	Medium[2] if monthly benefit at NRA is		High[3] if monthly benefit at NRA is greater than—
		From	To	
1997	400	400	1,684	1,684
1998	413	413	1,738	1,738
1999	426	426	1,794	1,794
2000	440	440	1,850	1,850
2001	453	453	1,907	1,907
2002	467	467	1,966	1,966
2003	482	482	2,027	2,027
2004	497	497	2,090	2,090
2005	512	512	2,155	2,155

TABLE I–96.—SELECTION OF RETIREMENT RATE CATEGORY—Continued

[For Plans with valuation dates after December 31, 1995, and before January 1, 1997]

Participant reaches NRA in year—	Participant's retirement rate category is—			
	Low[1] if monthly benefit at NRA is less than—	Medium[2] if monthly benefit at NRA is		High[3] if monthly benefit at NRA is greater than—
		From	To	
2006 or later	528	528	2,221	2,221

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

Issued at Washington, DC this 11th day of December, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–30495 Filed 12–14–95; 8:45 am]

BILLING CODE 7708–01–P

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's (''PBGC's'') regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in January 1996, and to multiemployer plans with valuation dates in January 1996. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the January 1996 interest assumptions to be used under the Pension Benefit Guaranty Corporation's (''PBGC's'') regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the ''single-employer regulation'') and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the ''multiemployer regulation'').

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and ''benefit liabilities,'' *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during January 1996 and multiemployer plans that have undergone mass withdrawal and have valuation dates during January 1996.

For annuity benefits, the interest rates will be 5.60% for the first 20 years following the valuation date and 4.75% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.50% for the period during which benefits are in pay status, and 4.0% during all years preceding the benefit's placement in pay status. The above annuity interest assumptions represent a decrease (from those in effect for December 1995) of .40 percent for the first 20 years following the valuation date and of 1.00 percent thereafter. The lump sum interest assumptions are unchanged (from those in effect for December 1995).

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the Federal Register by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose

termination dates fall during January 1996, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during January 1996, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 27 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0}{}_{n}$: (as defined in § 2619.49 (b)(1)) for purposes of applying the formulas set forth in § 2619.49(b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n^1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
27	1–1–96	2–1–96	4.50	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0}{}_{n}$: (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * *	*		*		*	
January 1996	.0560	1–20	.0475	>20	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 27 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0}{}_{n}$: (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \pm n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i^1 shall apply for the following n1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
27	1–1–96	2–1–96	4.50	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0}{}_{n}$: (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13(b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * *	*		*		*	
January 1996	.0560	1–20	.0475	>20	N/A	N/A

Issued in Washington, DC, on this 11th day of December 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–30496 Filed 12–14–95; 8:45 am]

BILLING CODE 7708–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–5346–7]

Standards of Performance for New Stationary Sources; Supplemental Delegation of Authority to Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Informational notice.

SUMMARY: On September 29, 1995, the state of Mississippi, through the Department of Environmental Quality, requested that EPA delegate authority for implementation and enforcement of an amended category of the New Source Performance Standards (NSPS). Since EPA's review of Mississippi's pertinent laws, rules, and regulations showed them to be adequate and effective procedures for the implementation and enforcement of these Federal standards, EPA has made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is October 30, 1995.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.

Mississippi Department of Environmental Quality, Bureau of Pollution Control, Air Quality Division, P.O. Box 10385, Jackson, Mississippi 39289–0385.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the newly delegated standards should not be submitted to the Region 4 office, but should instead be submitted to the following address: Office of Pollution Control, Mississippi Department of Environmental Quality, P.O. Box 10385, Jackson, Mississippi 39289–0385.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning and Development Section, Air Programs Branch, United States Environmental Protection Agency, Region 4, 345 Courtland Street N.E., Atlanta, Georgia 30365, (404) 347–3555, x4216.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with Sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, (NSPS).

On November 10, 1981, EPA initially delegated the authority for implementation and enforcement of the NSPS programs to the state of Mississippi. On September 29, 1995, Mississippi requested a delegation of authority for implementation and enforcement of the following NSPS category found in 40 CFR Part 60.

Automobile and Light Duty Truck Surface Coating Operations, as amended by 59 FR 51383 (October 11, 1994), as specified in 40 CFR 60, Subpart MM.

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for this source category with the conditions set forth in the original delegation letter of November 30, 1981. Mississippi sources subject to the requirements of this subpart will now be under the jurisdiction of Mississippi.

Since review of the pertinent Mississippi laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned category of NSPS, the EPA hereby notifies the public that it has delegated the authority for the source category listed above on October 30, 1995. The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Authority: This notice is issued under the authority of sections 101, 111, and 301 of the Clean Air Act, as Amended (42 U.S.C. 7401, 7411, and 7601).

Dated: November 22, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–30553 Filed 12–14–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 63

[AD–FRL–5335–3]

RIN 2060–AD98

National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair (Surface Coating) Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) under Section 112 of the Clean Air Act as amended in 1990 (CAA) for shipbuilding and ship repair (surface coating) operations. The NESHAP requires existing and new major sources to control emissions using the maximum achievable control technology (MACT) to control hazardous air pollutants (HAP).

The MACT described herein is based on maximum HAP limits for various categories of marine coatings. Surface coating operations at shipyards are the focus of the NESHAP, and a variety of HAP are used as solvents in marine coatings. The HAP emitted by the facilities covered by this final rule include xylene, toluene, ethylbenzene, methyl ethyl ketone, methyl isobutyl ketone, ethylene glycol, and glycol ethers. All of these pollutants can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include irritation of the eye, nose, throat, and skin and damage to the blood cells, heart, liver, and kidneys. The final rule is estimated to reduce baseline emissions of HAP by 24 percent or 318.5 megagrams per year (Mg/yr) (350 tons per year (tpy)).

The emissions reductions achieved by these standards, combined with the emissions reductions achieved by similar standards, will achieve the primary goal of the CAA, which is to ''enhance the quality of the Nation's air resources so as to promote the public health and welfare and productive capacity of its population''. The intent of this final regulation is to protect the public health by requiring the maximum degree of reduction in emissions of volatile organic hazardous air pollutants (VOHAP) from new and existing sources, taking into consideration the cost of achieving such emission reduction, any nonair quality, health and environmental impacts, and energy requirements.

DATES: The effective date is December 15, 1995. Incorporation by reference of certain publications listed in the regulations is approved by the director of the Federal Register as of December 15, 1995.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. Department of Commerce, National Technical Information Service (NTIS), Springfield, Virginia, 22161, telephone number (703) 487–4650. Please refer to ''National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair Facilities (Surface Coating)—Background Information Document for Final Standards,'' EPA–453/R–95–016b. The BID contains (1) a summary of the changes made to the standards since proposal and (2) a summary of all the public comments made on the proposed standards and the Administrator's response to the comments.

Electronic versions of the promulgation BID as well as this final rule are available for download from the EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for data transfer of up to a 14,400 bits per second. If more information on TTN is needed, contact the systems operator at (919) 541–5384.

Docket. Docket No. A–92–11, containing supporting information used in developing the promulgated standards, is available for public inspection and copying from 8 a.m. to 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, Ground Floor, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Mohamed Serageldin at (919) 541–2379, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: Under Section 307(b)(1) of the CAA, judicial review of NESHAP is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of publication of this rule. Under Section 307(b)(2) of the CAA, the requirements that are the subject of this action may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The information presented in this preamble is organized as follows:

I. Regulatory Background and Purpose

Section 112 of the CAA requires the EPA to evaluate and control HAP emissions. The control of HAP is to be achieved through promulgation of emission standards under Sections 112(d) and (f), and of work practice standards under Section 112(h) where appropriate, for categories of sources that emit HAP. Pursuant to Section 112(c) of the CAA, the EPA published in the Federal Register the initial list of source categories that emit HAP on July 16, 1992 (57 FR. 31576). This list includes major and area sources of HAP for which the EPA intends to issue regulations between November 1992 and November 2000.

The CAA was created, in part, ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and productive capacity of its population'' 42 U.S.C. § 7401(b). This final regulation will protect the public health by reducing emissions of HAP from surface coating operations at shipbuilding and ship repair facilities (shipyards).

Many shipyards are major sources of HAP emissions, emitting over 23 Mg/yr (25 tpy) of organic HAP, including toluene, xylene, ethylbenzene, methanol, methyl ethyl ketone, methyl isobutyl ketone, ethylene glycol and glycol ethers. All of these pollutants can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include irritation of the eyes, nose, throat, and skin, irritation and damage to the blood cells, heart, liver, and kidneys. These adverse health effects are associated with a wide range of ambient concentrations and exposure times and are influenced by source-specific characteristics such as emission rates and local meteorological conditions. Health impacts are also dependent on multiple factors that affect human variability, such as genetics, age, health status (e.g., the presence of pre-existing disease), and lifestyle.

The final standards will reduce VOHAP emissions from shipyard surface coating operations by 318.5 Mg/yr (350 tpy) from a baseline level of 1,362 Mg/yr (1,497 tpy). No significant economic impacts are associated with the final standards. No firms or facilities are at risk of closure as a result of the final standards, and there will not be a significant economic impact on a substantial number of small entities.

II. The Standards

The final rule is applicable to all existing and new shipbuilding and repair facilities that are major sources of HAP or are located at plant sites that are major sources. Major source facilities that are subject to this rule must not apply any marine coating with a VOHAP content in excess of the applicable limit and must implement the work practices required in the rule. Section 112(a) of the CAA defines major source as a source, or group of sources, located within a contiguous area and under common control that emits or has the potential to emit, considering controls, 9.1 Mg/yr (10 tpy) or more of any individual HAP or 22.7 Mg/yr (25 tpy) or more of any combination of HAP. Area sources are stationary sources that do not qualify as ''major.'' The term ''affected source'' as used in this rule means the total of all HAP emission points at each shipbuilding and ship repair facility that is subject to the rule. ''Potential to emit'' is defined in the Section 112 General Provisions (40 CFR 63.2) as ''the maximum capacity of a stationary source to emit a pollutant under its physical or operational design.''

To determine the applicability of this rule to facilities that are within a contiguous area of other HAP-emitting emission sources that are not part of the source category covered by this rule, the owner or operator must determine whether the plant site as a whole is a major source. A formal HAP emissions inventory must be used to determine if total HAP emissions from all HAP emission sources at the plant site meets the definition of a major source. The actual emissions of HAP from most shipyards are substantially less than the major source cutoff limits [i.e., 9.1 Mg/yr (10 tpy) of any single HAP, or 22.8 Mg/yr (25 tpy) of all HAP combined]. If the source becomes a synthetic minor source through accepting enforceable restrictions that ensure potential and actual HAP emissions will be below the major source cutoffs, the NESHAP does not apply. See promulgation BID Section 2.4 for additional details and the associated recordkeeping provisions (see **ADDRESSES** section of this preamble).

Existing major sources may switch to area source status by obtaining and complying with a federally enforceable limit on their potential to emit prior to the ''compliance date'' of the regulation. The ''compliance date'' for this regulation is defined as December 16, 1996. New major sources are required to comply with the NESHAP requirements upon start up or the promulgation date, whichever is later. Existing major sources may switch to area source status by obtaining and complying with a federally enforceable limit on their potential to emit that makes the facility an area source prior to the ''compliance date'' of the regulation. The compliance date for this regulation is December 16, 1996. A facility that has not obtained federally enforceable limits on its potential to emit by the compliance date, and that has not complied with the NESHAP requirements, will be in violation of the NESHAP. New major sources are required to comply with the NESHAP requirements upon start-up or the promulgation date, whichever is later. All sources that are major sources for HAP on the compliance date are required to comply permanently with the NESHAP to ensure that the maximum achievable reductions in toxic emissions are achieved and maintained. All major sources for HAP on the ''compliance date'' are required to comply permanently with the NESHAP to ensure that the maximum achievable reductions in toxic emissions are achieved and maintained.

The final standards impose limits on the VOHAP content of 23 types of coatings used at shipyards. Compliance with the VOHAP limits must be demonstrated on a monthly basis. The promulgated standards include four compliance options to allow owners or operators flexibility in demonstrating compliance with the VOHAP limits. The final standards also allow for an alternative means of compliance other than using compliant coatings, if approved by the Administrator. The Administrator shall approve the alternative means of limiting emissions if, in the Administrator's judgment,

(after control) emissions of VOHAP per volume solids applied will be no greater than those from the use of coatings that comply with the applicable VOHAP limits.

The final standards also require that all handling and transfer of VOHAP containing materials to and from containers, tanks, vats, vessels, and piping systems be conducted in a manner that minimizes spills and other factors leading to emissions. (This requirement includes hand- or brush-application of coatings.) In addition, containers of thinning solvent or waste that hold any VOHAP must be normally closed (to minimize evaporation) unless materials are being added to or removed from them.

Owners or operators of existing shipbuilding and ship repair (surface coating) operations subject to the requirements promulgated under Section 112(d) of the CAA are required to comply with the standards within 1 year from December 15, 1995. Owners or operators of new shipbuilding and ship repair (surface coating) operations with initial startup before or after December 15, 1996 are required to comply with all requirements of the standards upon startup. The first requirement is the initial notification due 6 months before start up.

III. Summary of Impacts

These standards will reduce nationwide emissions of HAP from shipbuilding and ship repair (surface coating) operations by approximately 318.5 Mg (350 tons) in 1997 compared to the emissions that would result in the absence of the standards. These standards will also reduce volatile organic compounds (VOC) emissions from those same shipbuilding and ship repair (surface coating) operations by approximately 837 Mg (920 tons) in 1997 compared to the emissions that would result in the absence of the standards. No significant adverse secondary air, water, solid waste, or energy impacts are anticipated from the promulgation of these standards.

Implementation of this regulation is expected to result in nationwide annualized costs for existing shipyards of about $2 million beyond baseline. This estimation is based on an analysis of the application of VOHAP limits on marine coatings at all existing major source facilities not currently controlled to the level of the standards.

The economic impact analysis conducted prior to proposal showed that the economic impacts from the proposed standard would be insignificant. An update of the economic impact analysis (due to revisions to the final rule) indicates that the original conclusion still holds true. Implementation of the rule is not expected to cause significant economic impacts for the 35 major source facilities in this industry.

IV. Significant Changes to the Proposed Standards

A. Public Participation

The standards were proposed and the preamble was published in the Federal Register on December 6, 1994 (59 FR 62681). The preamble to the proposed standards discussed the availability of the regulatory text and proposal BID, which described the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the regulatory text and BID were distributed to interested parties. Electronic versions of the preamble, regulation, and BID were made available to interested parties via the TTN (see **SUPPLEMENTARY INFORMATION** section of this preamble).

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on January 18, 1995 in Research Triangle Park, North Carolina. The public comment period was from December 6, 1994 to February 17, 1995. In all, 22 comment letters were received (including one duplicate). The comments have been carefully considered, and changes have been made to the proposed standards when determined by the Administrator to be appropriate.

B. Comments on the Proposed Standards

Comments on the proposed standards were received from 22 commenters; the commenters were comprised mainly of States, shipyard owners or operators, marine coating manufacturers, environmental groups, and trade associations. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions that have been made to the standards between proposal and promulgation. (Some additional changes have been made to clarify the standards and improve their organization.) Most of the comment letters contained multiple comments. For summary purposes, the comments were grouped into several topic areas.

C. Significant Comments/Changes

Several changes have been made since the proposal of these standards. The majority of the changes have been made to clarify portions of the rule that were unclear to the commenters. A summary of the major comments and changes is presented below.

(1) Applicability to Coating Manufacturers

Several commenters asked the EPA to regulate the manufacture and sale of marine coatings rather than the end users (shipyards). While this approach has some obvious advantages, the EPA does not have authority to regulate (with this NESHAP) the manufacture and sale of coatings under Section 112(d). The EPA plans to address requirements for coating manufacturers under Section 183(e) of the CAA by March 1997 through either a national rule or a control techniques guidelines (CTG).

(2) Number of Major Sources/MACT Floor

Some commenters thought the EPA underestimated the number of major source shipyards, and thereby erred in the MACT floor determination. Although the EPA based the proposed number of major sources on the best available information at the time, there has been recent additional information provided by the Louisiana Department of Environmental Quality (Louisiana having more shipyards than any other State) showing there are four other shipyards with HAP emissions greater than the major source cutoffs. At the same time, however, the same additional information indicated that one of the shipyards identified in the original list of 25 has HAP emissions well below the major source cutoffs (based on recent operating permit data).

This information along with other State permit data on annual paint usage and VOC/VOHAP emissions indicates that there are 35 major sources, instead of the estimated 25 discussed in the proposal preamble. Even though 10 additional major sources have been identified, the MACT floor would not change. At proposal, the EPA based the MACT floor on the control achieved by the best-performing 5 sources, as required by Section 112 (d)(3) of the CAA when there are less than 30 sources in the category. If there are 35 sources in the category, the MACT floor would be based on the best-performing 4.2 sources (12 percent of the 35) as required by Section 112 (d)(3). Under both situations, the MACT floor is the same.

Another point to be considered is that even if there are 45 major source

shipyards, the best 12 percent is still represented by the best $0.12 \times 45 = 5.4$ or best 5 yards. Both the MACT floor and the associated marine coating VOHAP limits would be identical. Since the NESHAP proposal date, the Navy has adopted VOC limits identical to (or more stringent than) the 1992 California limits for all Naval shipyards and Navy-related work. Since at least two of the Naval shipyards qualify as major sources, if the MACT floor were to be recalculated today, the limits would be identical to the proposed (and promulgated) limits, regardless of the approach used to determine the mean or median level of control. The Louisiana limits, which are less stringent for the major use categories of coatings, would not enter into any of the floor calculations.

Recent indications from the Navy and other industry representatives reveal that fewer affected sources exist today because of base closings and consolidation efforts. The original estimation of 25 major source shipyards was based on annual paint and solvent usage, type of work conducted (new construction versus repair), number of employees, and type (size) of vessels serviced. The (weighted) average HAP concentration of all marine coatings is an integral part of emissions estimates and determining if a shipyard qualifies as a major source facility. Other HAP-emitting processes at most shipyards such as welding, metal forming/cutting, and abrasive blasting exist, but the vast majority of HAP emissions come from organic solvents used in marine paints and solvents used for thinning and cleaning.

(3) Elimination of Compliance Option 1

Proposed compliance option 1 required that each and every container of coating be tested or certified prior to application. Based on comments pertaining to its impracticality and the unrealistic costs associated with testing/certifying every container of coating, compliance option 1 was eliminated from the final rule. The flow diagram (included as Figure 1 in the regulation) summarizing the various compliance options was similarly revised and simplified.

(4) Training Requirements

In the proposed rule, the EPA required training and certification for all personnel involved with paints and/or solvents. There were several comments regarding the inappropriate amount and level of detail involved with the training and annual personnel certifications. Some commenters indicated that there was a high turnover rate involving personnel, and the proposed training requirements would impose a significant impact for very little reduction in HAP emissions. The EPA has determined that it is appropriate to leave the details of training to the individual shipyards who can best define the real needs of their specific locations and applications. Affected sources are responsible for complying with the standards, and it is in their own best interest to ensure that workers are aware of the associated requirements. Therefore, all training requirements related to painting/thinning, handling/transfer of VOHAP-containing materials, and certification of all personnel involved with surface coating operations have been eliminated from the final rule.

(5) Definition of Pleasure Craft

A definition of pleasure craft has been added to ensure that the standards apply only to those coatings (and solvents) used on commercial and military vessels. Some commenters were concerned that, as proposed, the rule could be interpreted to regulate coatings used on pleasure crafts. Other commenters suggested that pleasure crafts should be included. The EPA did not intend to include coatings used on pleasure crafts in these standards. Such coatings (applications) will be considered under the development of the Boat Manufacturing NESHAP.

(6) Definition of Affected Source

The definition of affected source was modified to ensure that the requirements of the standards apply only to those sources (major source shipyards) with a minimum annual marine coating usage of 1,000 L (264.2 gal). The primary focus of this NESHAP is surface coating operations and this clarification will minimize/eliminate the impact on shipyards with minimal surface coating emissions.

(7) Reporting and Notification Changes

Changes have also been made to the notification and reporting schedules. The initial notification deadline has been extended from 120 to 180 days. The frequency of reporting has also been reduced from the proposed quarterly requirement to semiannual. This change was made to allow shipyards to be consistent with current/upcoming Title V permit requirements. The first compliance certification report is due 6 months after the compliance date.

(8) Exemptions

Several commenters recommended that the EPA adopt some of the exemptions provided in various State regulations. Since the MACT floor was based on three shipyards located in California and those yards have exemptions similar to those requested, the EPA determined there would be no significant impact and adopted the following exemptions:

a. Any individual coating with annual usage less than 200 liters (52.8 gallons) is exempt from the requirements of the standards (i.e., the applicable VOHAP limit). The total amount of all coatings exempted in any given year cannot exceed 1,000 liters (264.2 gallons); and

b. Any coating applied via nonrefillable hand-held aerosol cans is exempt from the requirements of the standards.

(9) Revision of Equations

The equations used with compliance options 2 and 3 (proposed options 3 and 4) have been changed so that calculations are based on volume solids. The revised equations require the VOHAP limits based on volume solids be used in place of the VOHAP limits based on volume of coating less water and non-HAP exempt solvents. This change was made to provide a uniform basis for calculating emission reductions (i.e., associated with thinning additions or add-on control devices).

(10) Weather-related VOHAP limits

The proposal preamble requested comments on how to handle thinning issues for various climatic conditions. The EPA reviewed the comments and collected additional information on both cold-and hot/humid-weather thinning practices. As a result of this information, cold-weather VOHAP limits are included as part of the final rule. If the temperature is below 4.5°C (40°F) at the time the coating is applied and the source needs to thin that coating beyond the applicable VOHAP limit, the date, time, and temperature (including units) must be documented, and the applicable cold-weather VOHAP limit may be used. The cold-weather VOHAP limits on a solids basis were increased equivalently, but the actual values vary for each coating category. The cold-weather VOHAP limits are applicable only to as-supplied coatings that are greater than 40 percent solids by volume.

With regards to hot/humid weather conditions, the data and responses to Section 114 information requests sent by EPA to nine shipyards and other information received did not provide a basis for including a humid weather thinning allowance. Respondents identified meteorological conditions under which coatings must be thinned

or not applied at all. Only one shipyard, which uses large quantities of water-based preconstruction primer, maintained that a humid weather thinning allowance should be adopted. However, the shipyard did not explain how hydrocarbon-based thinners would relate to its water-based operation.

Hot and humid weather conditions appear to inhibit coating operations work less frequently than does cold weather. The different responses can best be understood as they relate to the specifications for thinning under different climatic conditions, which are dependent on paint type and manufacturer. Some coating formulations lose at high temperature more organic solvent than others which could lead to thickening (increase in viscosity) of the paint. This occurs where the rate of application is low and paint containers remain uncovered. Nevertheless, beginning in September 1994, shipyards performing work for the Navy in humid climates such as Louisiana, Florida, and Virginia are required by the Navy to use paints with VOHAP contents levels that are in compliance with the limits in the NESHAP, without provision for additional thinning. There is no reason that VOHAP limits that are achievable for paints used by the Navy cannot also be achieved for paints used by commercial shipyards located in humid climates and that, therefore, a thinning allowance for hot/humid weather conditions is not necessary. If conditions necessitate application of small amount of noncompliant coatings, the regulation provides a low usage exemption of 1,000 liters of coating per year.

D. Minor Changes

This section contains a list of several of the minor changes to the final rule. A discussion of these changes can be found in the promulgation BID. (See **ADDRESSES** section of this preamble.)

(1) Revisions to definitions and phrasing have been made to clarify the regulation.

(2) Based on comments received and on changes to the notification and recordkeeping and reporting requirements, those sections of the standard have been reorganized and overlapping requirements clarified or eliminated.

(3) Table 2, which contains the VOHAP limits for the various coating categories, has been simplified to contain only one set of units (metric). The conversion factor for English units is included as a footnote to the table.

V. Control Techniques Guidelines (CTG)

Section 183(b)(4) of the CAA requires the Administrator to issue a CTG document for limiting VOC and particulate matter emissions from coatings (paints) and solvents used in the shipbuilding and ship repair industry. Since VOHAP emissions from this industry are generally a subset of VOC emissions, the control techniques evaluated for the MACT standard are also applicable to VOC emissions. Therefore, the EPA has developed the CTG concurrently with the NESHAP and will be issuing final guidance under a separate notice. As explained in the proposal notice (AD–FR–), no CTG is being issued for particulate matter emissions.

VI. Administrative Requirements

A. Docket

The Docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The Docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and the EPA responses to significant comments, the contents of the Docket will serve as the record in case of judicial review [see 42 U.S.C. 7607(d)(7)(A)].

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) is currently reviewing the information collection request (ICR) requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0330 and EPA ICR number 1712.2.

The information required to be collected by this rule is needed as part of the overall compliance and enforcement program. It is necessary to identify the regulated entities who are subject to the rule and to ensure their compliance with the rule. The recordkeeping and reporting requirements are mandatory and are being established under authority of Section 114 of the Act. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the EPA policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

The total annual reporting and recordkeeping burden for this collection averaged over the first 3 years is estimated to be $26,218 per year. The average burden, per respondent, is 772 hours per year. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The rule requires an initial one-time notification from each respondent and subsequent notification every 6 months to indicate their compliance status. At the time of the initial notification each respondent would also be required to submit an implementation plan that describes compliance procedures. A respondent would also be required to keep necessary records of data to determine compliance with the standards in the regulation. The data would be recorded monthly. A report would need to be submitted semi-annually by each respondent. There would be an estimated 35 respondents to the proposed collection requirements.

Send comments on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE

Regulatory Information Division; U. S. Environmental Protection Agency (2136); 401 M Street SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW.; Washington, DC 20503; marked ''Attention: Desk Officer for EPA.'' Include the OMB number and the EPA ICR number in any correspondence.

C. Executive Order 12866: Administrative Designation and Regulatory Analysis

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the EPA is required to judge whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of this Executive Order to prepare a regulatory impact analysis (RIA). The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' and is therefore not subject to OMB review.

D. Executive Order 12875

To reduce the burden of federal regulations on States and small governments, the President issued Executive Order 12875 on October 26, 1993, entitled Enhancing the Intergovernmental Partnership. In particular, this executive order is designed to require agencies to assess the effects of regulations that are not required by statute and that create mandates upon State, local, or tribal governments. Two methods exist for complying with the requirements of the executive order: (1) Assure that funds necessary to pay direct costs of compliance with a regulation are provided, or (2) provide OMB a description of the communications and consultations with State/local/tribal governments, the nature of their concerns, any written submission from them, and the EPA's position supporting the need to issue the regulation.

The EPA has always been concerned about the effect of the cost of regulations on small entities; the EPA has consulted with and sought input from public entities to explain costs and burdens they may incur.

The EPA advised interested parties on July 16, 1992 (57 FR 21592), of the categories considered as major and area sources of HAP, and shipbuilding and ship repair (surface coating) industry was listed as a category of both major and area sources. The EPA made significant effort to hear from all levels of interest and all segments of the shipbuilding and ship repair industry. To facilitate comments and input, the EPA conducted comprehensive mailouts of draft and proposal package materials in 1993 and 1994 to shipyards, Department of the Navy (Naval Sea Systems Command), marine coating manufacturers, and State and local government officials. All were given opportunity to comment on the presented regulatory development activities of the standard. Throughout the regulatory development process and more specifically in consultation meetings, industry representatives from commercial/private shipyards, the U.S. Navy, and various trade associations were given an opportunity to comment on the proposed regulatory approach and the MACT alternatives being developed. The major topic areas resulting from these discussions included the need for cold-weather thinning limits, flexibility in compliance approaches, and the need for additional data regarding certain coating categories (i.e., inorganic zincs). Some of these meetings were held at EPA, while others were conducted at shipyard locations. In addition, individual consultations were conducted with three local (air quality management) districts in California regarding the use of the mass of VOHAP/volume of solids for determining compliance when the coating is thinned.

The EPA addressed many of the suggestions and comments received from State and local agencies during the public comment period, many of which will reduce the impact to small businesses. Some of these suggestions resulted in changes to the rule, including modification of the definition of pleasure craft to clarify that the standards apply only to coatings (and solvents) used on commercial and military vessels and not to boats in non-military shipyards less than 20 meters in length; modification of the definition of affected source to ensure that the requirements of the standards apply only to those sources (major source shipyards) with a minimum annual marine coating usage of 1,000 Liters (264.2 gallons); exemption of any individual coating with annual usage less than 200 liters (52.8 gallons) (i.e., the applicable VOHAP limit); exemption of any coating applied via nonrefillable hand-held aerosol cans; making the equations used to determine thinning allowance the same for all options to provide a uniform basis for calculating emission reductions (i.e., associated with thinning additions or add-on control devices); extension of the initial notification deadline from 120 to 180 days and reduction of the frequency of reporting from the proposed quarterly requirement to semiannual, which allows shipyards to be consistent with current/upcoming Title V permit requirements; reorganization and clarification of the notification and recordkeeping and reporting requirement, including revision of the definitions and phrasing to ensure that the terminology is understandable; and the addition of 10 major sources based on data provided by Louisiana and Texas State agencies.

Some of the other major concerns that were noted in the State and/or local agency comments and that were considered by the EPA in developing the proposed and final rule involved realistic work practice standards, multiple compliance options to provide flexibility for shipyard owners/operators and State regulators, and streamlining (or eliminating) any overlapping recordkeeping and reporting requirements. Documentation of all meetings and public comments can be found in Docket A–92–11.

The EPA has considered the purpose and intent of Executive Order 12875 and has determined that shipbuilding and ship repair facility NESHAP are needed. The rule is generally required by statute under Section 112 of the CAA because shipbuilding and ship repair facilities emit significant quantities of air pollutants. Through meetings and consultations during project development and proposal, efforts were made to inform entities of the costs required to comply with the regulation; in addition, modifications were made to reduce the burden to small entities.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the EPA to consider potential impacts of proposed regulations on small business ''entities.'' If a preliminary analysis indicates that a proposed regulation would have a

significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared. The EPA's analysis of these impacts was provided in the preamble to the proposed rule (59 FR 62681) and no negative impacts for small businesses will result from the changes incorporated into the final rule.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

F. Unfunded Mandates Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the EPA generally must prepare a written statement including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Incorporation by reference, Marine coating limits, Reporting and recordkeeping requirements, Shipbuilding and ship repair standards.

Dated: November 14, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SHIPBUILDING AND SHIP REPAIR (SURFACE COATING)

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

Authority: Sections 101, 112, 114, 116, and 301 of the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Pub. L. 101–549, 104 Stat. 2399).

2. Section 63.14 is amended by adding paragraph (b)(4) through (b)(14) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(4) ASTM D523–89, Standard Test Method for Specular Gloss, IBR approved for § 63.782.

(5) ASTM D1475–90, Standard Test Method for Density of Paint, Varnish, Lacquer, and Related Products, IBR approved for § 63.788 appendix A.

(6) ASTM D2369–93, Standard Test Method for Volatile Content of Coatings, IBR approved for § 63.788 appendix A.

(7) ASTM D3912–80, Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants, IBR approved for § 63.782.

(8) ASTM D4017–90, Standard Test Method for Water and Paints and Paint Materials by Karl Fischer Method, IBR approved for § 63.788 appendix A.

(9) ASTM D4082–89, Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants, IBR approved for § 63.782.

(10) ASTM D4256–89 [reapproved 1994], Standard Test Method for Determination of the Decontaminability of Coatings Used in Light-Water Nuclear Power Plants, IBR approved for § 63.782.

(11) ASTM D3792–91, Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph, IBR approved for § 63.788 appendix A.

(12) ASTM D3257–93, Standard Test Methods for Aromatics in Mineral Spirits by Gas Chromatography, IBR approved for § 63.786(b).

(13) ASTM E260–91, Standard Practice for Packed Column Gas Chromatography, IBR approved for § 63.786(b).

(14) ASTM E180–93, Standard Practice for Determining the Precision of ASTM Methods for Analysis and Testing of Industrial Chemicals, IBR approved for § 63.786(b).

3. Part 63 is amended by adding subpart II to read as follows:

Subpart II—National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)

Secs.

Subpart II—National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)

§ 63.780 Relationship of subpart II to subpart A of this part.

Table 1 of this subpart specifies the provisions of subpart A of this part that apply to owners and operators of sources subject to the provisions of this subpart.

§ 63.781 Applicability.

(a) The provisions of this subpart apply to shipbuilding and ship repair operations at any facility that is a major source.

(b) The provisions of this subpart do not apply to coatings used in volumes of less than 200 liters (52.8 gallons) per

year, provided the total volume of coating exempt under this paragraph does not exceed 1,000 liters per year (264 gallons per year) at any facility. Coatings exempt under this paragraph shall be clearly labeled as ''low-usage exempt,'' and the volume of each such coating applied shall be maintained in the facility's records.

(c) The provisions of this subpart do not apply to coatings applied with hand-held, nonrefillable, aerosol containers or to unsaturated polyester resin (i.e., fiberglass lay-up) coatings. Coatings applied to suitably prepared fiberglass surfaces for protective or decorative purposes are subject to this subpart.

(d) The provisions in subpart A of this part pertaining to startups, shutdowns, and malfunctions and continuous monitoring do not apply to this source category unless an add-on control system is used to comply with this subpart in accordance with § 63.783(c).

§ 63.782 Definitions.

Terms used in this subpart are defined in the Clean Air Act (CAA), in subpart A of part 63, or in this section as follows:

Add-on control system means an air pollution control device such as a carbon absorber or incinerator that reduces pollution in an air stream by destruction or removal prior to discharge to the atmosphere.

Affected source means any shipbuilding or ship repair facility having surface coating operations with a minimum 1,000 liters (L) (264 gallons [gal]) annual marine coating usage that is subject to this subpart.

Air flask specialty coating means any special composition coating applied to interior surfaces of high pressure breathing air flasks to provide corrosion resistance and that is certified safe for use with breathing air supplies.

Antenna specialty coating means any coating applied to equipment through which electromagnetic signals must pass for reception or transmission.

Antifoulant specialty coating means any coating that is applied to the underwater portion of a vessel to prevent or reduce the attachment of biological organisms and that is registered with the EPA as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act.

As applied means the condition of a coating at the time of application to the substrate, including any thinning solvent.

As supplied means the condition of a coating before any thinning, as sold and delivered by the coating manufacturer to the user.

Batch means the product of an individual production run of a coating manufacturer's process. A batch may vary in composition from other batches of the same product.

Bitumens mean black or brown materials that are soluble in carbon disulfide and consist mainly of hydrocarbons.

Bituminous resin coating means any coating that incorporates bitumens as a principal component and is formulated primarily to be applied to a substrate or surface to resist ultraviolet radiation and/or water.

Certify means, in reference to the volatile organic compounds (VOC) content or volatile organic hazardous air pollutants (VOHAP) content of a coating, to attest to the VOC content as determined through analysis by Method 24 of appendix A to 40 CFR part 60 or through use of forms and procedures outlined in appendix A of this subpart, or to attest to the VOHAP content as determined through an Administrator-approved test method. In the case of conflicting results, Method 24 of Appendix A to 40 CFR part 60 shall take precedence over the forms and procedures outlined in appendix A to this subpart for the options in which VOC is used as a surrogate for VOHAP.

Coating means any material that can be applied as a thin layer to a substrate and which cures to form a continuous solid film.

Cold-weather time period means any time during which the ambient temperature is below 4.5°C (40°F) and coating is to be applied.

Container of coating means the container from which the coating is applied, including but not limited to a bucket or pot.

Cure volatiles means reaction products which are emitted during the chemical reaction which takes place in some coating films at the cure temperature. These emissions are other than those from the solvents in the coating and may, in some cases, comprise a significant portion of total VOC and/or VOHAP emissions.

Epoxy means any thermoset coating formed by reaction of an epoxy resin (i.e., a resin containing a reactive epoxide with a curing agent).

Exempt compounds means specified organic compounds that are not considered VOC due to negligible photochemical reactivity. Exempt compounds are specified in 40 CFR 51.100(s).

Facility means all contiguous or adjoining property that is under common ownership or control, including properties that are separated only by a road or other public right-of-way.

General use coating means any coating that is not a specialty coating.

Hazardous air pollutants (HAP) means any air pollutant listed in or pursuant to section 112(b) of the CAA.

Heat resistant specialty coating means any coating that during normal use must withstand a temperature of at least 204°C (400°F).

High-gloss specialty coating means any coating that achieves at least 85 percent reflectance on a 60 degree meter when tested by ASTM Method D523 (incorporation by reference—see § 63.14).

High-temperature specialty coating means any coating that during normal use must withstand a temperature of at least 426°C (800°F).

Inorganic zinc (high-build) specialty coating means a coating that contains 960 grams per liter (8 pounds per gallon) or more elemental zinc incorporated into an inorganic silicate binder that is applied to steel to provide galvanic corrosion resistance. (These coatings are typically applied at more than 2 mil dry film thickness.)

Major source means any source that emits or has the potential to emit, in the aggregate, 9.1 megagrams per year (10 tons per year) or more of any HAP or 22.7 megagrams per year (25 tons per year) or more of any combination of HAP.

Maximum allowable thinning ratio means the maximum volume of thinner that can be added per volume of coating without violating the standards of § 63.783(a), as determined using Equation 1 of this subpart.

Military exterior specialty coating or Chemical Agent Resistant Coatings (''CARC'') means any exterior topcoat applied to military or U.S. Coast Guard vessels that are subject to specific chemical, biological, and radiological washdown requirements.

Mist specialty coating means any low viscosity, thin film, epoxy coating applied to an inorganic zinc primer that penetrates the porous zinc primer and allows the occluded air to escape through the paint film prior to curing.

Navigational aids specialty coating means any coating applied to Coast Guard buoys or other Coast Guard waterway markers when they are recoated aboard ship at their usage site and immediately returned to the water.

Nonskid specialty coating means any coating applied to the horizontal surfaces of a marine vessel for the specific purpose of providing slip resistance for personnel, vehicles, or aircraft.

Nonvolatiles (or volume solids) means substances that do not evaporate readily. This term refers to the film-forming material of a coating.

Normally closed means a container or piping system is closed unless an operator is actively engaged in adding or removing material.

Nuclear specialty coating means any protective coating used to seal porous surfaces such as steel (or concrete) that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure (ASTM D4082–89 [incorporation by reference—see § 63.14]), relatively easy to decontaminate (ASTM D4256–89 [reapproved 1994] [incorporation by reference—see § 63.14]), and resistant to various chemicals to which the coatings are likely to be exposed (ASTM D3912–80 [incorporation by reference—see § 63.14]). [For nuclear coatings, see the general protective requirements outlined by the U.S. Nuclear Regulatory Commission in a report entitled ''U.S. Atomic Energy Commission Regulatory Guide 1.54'' dated June 1973, available through the Government Printing Office at (202) 512–2249 as document number A74062–00001.]

Operating parameter value means a minimum or maximum value established for a control device or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limitation or standard.

Organic zinc specialty coating means any coating derived from zinc dust incorporated into an organic binder that contains more than 960 grams of elemental zinc per liter (8 pounds per gallon) of coating, as applied, and that is used for the expressed purpose of corrosion protection.

Pleasure craft means any marine or fresh-water vessel used by individuals for noncommercial, nonmilitary, and recreational purposes that is less than 20 meters in length. A vessel rented exclusively to or chartered by individuals for such purposes shall be considered a pleasure craft.

Pretreatment wash primer specialty coating means any coating that contains a minimum of 0.5 percent acid, by mass, and is applied only to bare metal to etch the surface and enhance adhesion of subsequent coatings.

Repair and maintenance of thermoplastic coating of commercial vessels (specialty coating) means any vinyl, chlorinated rubber, or bituminous resin coating that is applied over the same type of existing coating to perform the partial recoating of any in-use commercial vessel. (This definition does not include coal tar epoxy coatings, which are considered ''general use'' coatings.)

Rubber camouflage specialty coating means any specially formulated epoxy coating used as a camouflage topcoat for exterior submarine hulls and sonar domes. Sealant for thermal spray aluminum means any epoxy coating applied to thermal spray aluminum surfaces at a maximum thickness of 1 dry mil.

Ship means any marine or fresh-water vessel used for military or commercial operations, including self-propelled vessels, those propelled by other craft (barges), and navigational aids (buoys). This definition includes, but is not limited to, all military and Coast Guard vessels, commercial cargo and passenger (cruise) ships, ferries, barges, tankers, container ships, patrol and pilot boats, and dredges. For purposes of this subpart, pleasure crafts and offshore oil and gas drilling platforms are not considered ships.

Shipbuilding and ship repair operations means any building, repair, repainting, converting, or alteration of ships.

Special marking specialty coating means any coating that is used for safety or identification applications, such as markings on flight decks and ships' numbers.

Specialty coating means any coating that is manufactured and used for one of the specialized applications described within this list of definitions.

Specialty interior coating means any coating used on interior surfaces aboard U.S. military vessels pursuant to a coating specification that requires the coating to meet specified fire retardant and low toxicity requirements, in addition to the other applicable military physical and performance requirements.

Tack specialty coating means any thin film epoxy coating applied at a maximum thickness of 2 dry mils to prepare an epoxy coating that has dried beyond the time limit specified by the manufacturer for the application of the next coat.

Thinner means a liquid that is used to reduce the viscosity of a coating and that evaporates before or during the cure of a film.

Thinning ratio means the volumetric ratio of thinner to coating, as supplied.

Thinning solvent: see Thinner.

Undersea weapons systems specialty coating means any coating applied to any component of a weapons system intended to be launched or fired from under the sea.

Volatile organic compounds (VOC) is as defined in § 51.100(s) of this chapter.

Volatile organic hazardous air pollutants (VOHAP) means any compound listed in or pursuant to section 112(b) of the CAA that contains carbon, excluding metallic carbides and carbonates. This definition includes VOC listed as HAP and exempt compounds listed as HAP.

Weld-through preconstruction primer (specialty coating) means a coating that provides corrosion protection for steel during inventory, is typically applied at less than 1 mil dry film thickness, does not require removal prior to welding, is temperature resistant (burn back from a weld is less than 1.25 centimeters [0.5 inch]), and does not normally require removal before applying film-building coatings, including inorganic zinc high-build coatings. When constructing new vessels, there may be a need to remove areas of weld-through preconstruction primer due to surface damage or contamination prior to application of film-building coatings.

§ 63.783 Standards.

(a) No owner or operator of any existing or new affected source shall cause or allow the application of any coating to a ship with an as-applied VOHAP content exceeding the applicable limit given in Table 2 of this subpart, as determined by the procedures described in § 63.785 (c)(1) through (c)(4). For the compliance procedures described in § 63.785 (c)(1) through (c)(3), VOC shall be used as a surrogate for VOHAP, and Method 24 of Appendix A to 40 CFR part 60 shall be used as the definitive measure for determining compliance. For the compliance procedure described in § 63.785(c)(4), an alternative test method capable of measuring independent VOHAP shall be used to determine compliance. The method must be submitted to and approved by the Administrator.

(b) Each owner or operator of a new or existing affected source shall ensure that:

(1) All handling and transfer of VOHAP-containing materials to and from containers, tanks, vats, drums, and piping systems is conducted in a manner that minimizes spills.

(2) All containers, tanks, vats, drums, and piping systems are free of cracks, holes, and other defects and remain closed unless materials are being added to or removed from them.

(c) *Approval of alternative means of limiting emissions.* (1) The owner or operator of an affected source may apply to the Administrator for permission to use an alternative means (such as an

add-on control system) of limiting emissions from coating operations. The application must include:

(i) An engineering material balance evaluation that provides a comparison of the emissions that would be achieved using the alternative means to those that would result from using coatings that comply with the limits in Table 2 of this subpart, or the results from an emission test that accurately measures the capture efficiency and control device efficiency achieved by the control system and the composition of the associated coatings so that the emissions comparison can be made;

(ii) A proposed monitoring protocol that includes operating parameter values to be monitored for compliance and an explanation of how the operating parameter values will be established through a performance test; and

(iii) Details of appropriate recordkeeping and reporting procedures.

(2) The Administrator shall approve the alternative means of limiting emissions if, in the Administrator's judgment, postcontrol emissions of VOHAP per volume applied solids will be no greater than those from the use of coatings that comply with the limits in Table 2 of this subpart.

(3) The Administrator may condition approval on operation, maintenance, and monitoring requirements to ensure that emissions from the source are no greater than those that would otherwise result from this subpart. § 63.784 Compliance dates.

(a) Each owner or operator of an existing affected source shall comply within 1 year after the effective date of this subpart.

(b) Each owner or operator of an existing unaffected area source that increases its emissions of (or its potential to emit) HAP such that the source becomes a major source that is subject to this subpart shall comply within 1 year after the date of becoming a major source.

(c) Each owner or operator of a new or reconstructed source shall comply with this subpart according to the schedule in § 63.6(b).

§ 63.785 Compliance procedures.

(a) For each batch of coating that is received by an affected source, the owner or operator shall (see Figure 1 of this section for a flow diagram of the compliance procedures):

(1) Determine the coating category and the applicable VOHAP limit as specified in § 63.783(a).

(2) Certify the as-supplied VOC content of the batch of coating. The owner or operator may use a certification supplied by the manufacturer for the batch, although the owner or operator retains liability should subsequent testing reveal a violation. If the owner or operator performs the certification testing, only one of the containers in which the batch of coating was received is required to be tested.

(b)(1) In lieu of testing each batch of coating, as applied, the owner or operator may determine compliance with the VOHAP limits using any combination of the procedures described in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this section. The procedure used for each coating shall be determined and documented prior to application.

(2) The results of any compliance demonstration conducted by the affected source or any regulatory agency using Method 24 shall take precedence over the results using the procedures in paragraphs (c)(1), (c)(2), or (c)(3) of this section.

(3) The results of any compliance demonstration conducted by the affected source or any regulatory agency using an approved test method to determine VOHAP content shall take precedence over the results using the procedures in paragraph (c)(4) of this section.

(c)(1) *Coatings to which thinning solvent will not be added.* For coatings to which thinning solvent (or any other material) will not be added under any circumstance or to which only water is added, the owner or operator of an affected source shall comply as follows:

(i) Certify the as-applied VOC content of each batch of coating.

(ii) Notify the persons responsible for applying the coating that no thinning solvent may be added to the coating by affixing a label to each container of coating in the batch or through another means described in the implementation plan required in § 63.787(b).

(iii) If the certified as-applied VOC content of each batch of coating used during a calendar month is less than or equal to the applicable VOHAP limit in § 63.783(a) (either in terms of g/L of coating or g/L of solids), then compliance is demonstrated for that calendar month, unless a violation is revealed using Method 24 of Appendix A to 40 CFR part 60.

(2) *Coatings to which thinning solvent will be added—coating-by-coating compliance.* For a coating to which thinning solvent is routinely or sometimes added, the owner or operator shall comply as follows:

(i) Prior to the first application of each batch, designate a single thinner for the coating and calculate the maximum allowable thinning ratio (or ratios, if the affected source complies with the cold-weather limits in addition to the other limits specified in Table 2 of this subpart) for each batch as follows:

$$R = \frac{(V_s)(\text{VOHAP limit}) - m_{VOC}}{D_{th}} \quad \text{Eqn. 1}$$

where:

R=Maximum allowable thinning ratio for a given batch (L thinner/L coating as supplied);

V_s=Volume fraction of solids in the batch as supplied (L solids/L coating as supplied);

VOHAP limit=Maximum allowable as-applied VOHAP content of the coating (g VOHAP/L solids);

m_{VOC}=VOC content of the batch as supplied [g VOC (including cure volatiles and exempt compounds on the HAP list)/L coating (including water and exempt compounds) as supplied];

D_{th}=Density of the thinner (g/L).

If V_s is not supplied directly by the coating manufacturer, the owner or operator shall determine V_s as follows:

$$V_s = 1 - \frac{m_{volatiles}}{D_{avg}} \quad \text{Eqn. 2}$$

where:

$m_{volatiles}$=Total volatiles in the batch, including VOC, water, and exempt compounds (g/L coating); and

D_{avg}=Average density of volatiles in the batch (g/L).

The procedures specified in § 63.786(d) may be used to determine the values of variables defined in this paragraph. In addition, the owner or operator may choose to construct nomographs, based on Equation 1 of this subpart, similar or identical to the one provided in appendix B of this subpart as a means of easily estimating the maximum allowable thinning ratio.

(ii) Prior to the first application of each batch, notify painters and other persons, as necessary, of the designated thinner and maximum allowable thinning ratio(s) for each batch of the coating by affixing a label to each container of coating or through another means described in the implementation plan required in § 63.787(b).

(iii) By the 15th day of each calendar month, determine the volume of each batch of the coating used, as supplied, during the previous month.

(iv) By the 15th day of each calendar month, determine the total allowable volume of thinner for the coating used during the previous month as follows:

$$V_{th} = \sum_{i=1}^{n} (R \times V_b)_i + \sum_{i=1}^{n} (R_{cold} \times V_{b-cold})_i \qquad \text{Eqn. 3}$$

where:

V_{th}=Total allowable volume of thinner for the previous month (L thinner);

V_b=Volume of each batch, as supplied and before being thinned, used during non-cold-weather days of the previous month (L coating as supplied);

R_{cold}=Maximum allowable thinning ratio for each batch used during cold-weather days (L thinner/L coating as supplied);

$V_{b\text{-}cold}$=Volume of each batch, as supplied and before being thinned, used during cold-weather days of the previous month (L coating as supplied);

i=Each batch of coating; and

n=Total number of batches of the coating.

(v) By the 15th day of each calendar month, determine the volume of thinner actually used with the coating during the previous month.

(vi) If the volume of thinner actually used with the coating [paragraph (c)(3)(v) of this section] is less than or equal to the total allowable volume of thinner for the coating [paragraph (c)(3)(iv) of this section], then compliance is demonstrated for the coating for the previous month, unless a violation is revealed using Method 24 of Appendix A to 40 CFR part 60.

(3) *Coatings to which the same thinning solvent will be added—group compliance.* For coatings to which the same thinning solvent (or other material) is routinely or sometimes added, the owner or operator shall comply as follows:

(i) Designate a single thinner to be added to each coating during the month and ''group'' coatings according to their designated thinner.

(ii) Prior to the first application of each batch, calculate the maximum allowable thinning ratio (or ratios, if the affected source complies with the cold-weather limits in addition to the other limits specified in Table 2 of this subpart) for each batch of coating in the group using the equations in paragraph (c)(2) of this section.

(iii) Prior to the first application of each ''batch,'' notify painters and other persons, as necessary, of the designated thinner and maximum allowable thinning ratio(s) for each batch in the group by affixing a label to each container of coating or through another means described in the implementation plan required in § 63.787(b).

(iv) By the 15th day of each calendar month, determine the volume of each batch of the group used, as supplied, during the previous month.

(v) By the 15th day of each calendar month, determine the total allowable volume of thinner for the group for the previous month using Equation 3 of this subpart.

(vi) By the 15th day of each calendar month, determine the volume of thinner actually used with the group during the previous month.

(vii) If the volume of thinner actually used with the group [paragraph (c)(3)(vi) of this section] is less than or equal to the total allowable volume of thinner for the group [paragraph (c)(3)(v) of this section], then compliance is demonstrated for the group for the previous month, unless a violation is revealed using Method 24 of Appendix A to 40 CFR part 60.

(4) *Demonstration of compliance through an alternative (i.e., other than Method 24 of Appendix A to 40 CFR part 60) test method.* The owner or operator shall comply as follows:

(i) Certify the as-supplied VOHAP content (g VOHAP/L solids) of each batch of coating.

(ii) If no thinning solvent will be added to the coating, the owner or operator of an affected source shall follow the procedure described in § 63.785(c)(1), except that VOHAP content shall be used in lieu of VOC content.

(iii) If thinning solvent will be added to the coating, the owner or operator of an affected source shall follow the procedure described in § 63.785(c)(2) or (3), except that in Equation 1 of this subpart: the term ''m_{VOC}'' shall be replaced by the term ''m_{VOHAP},'' defined as the VOHAP content of the coating as supplied (g VOHAP/L coating) and the term ''D_{th}'' shall be replaced by the term ''$D_{th(VOHAP)}$'' defined as the average density of the VOHAP thinner(s) (g/L).

(d) A violation revealed through any approved test method shall result in a 1-day violation for enforcement purposes. A violation revealed through the recordkeeping procedures described in paragraphs (c)(1) through (c)(4) of this section shall result in a 30-day violation for enforcement purposes, unless the owner or operator provides sufficient data to demonstrate the specific days during which noncompliant coatings were applied.

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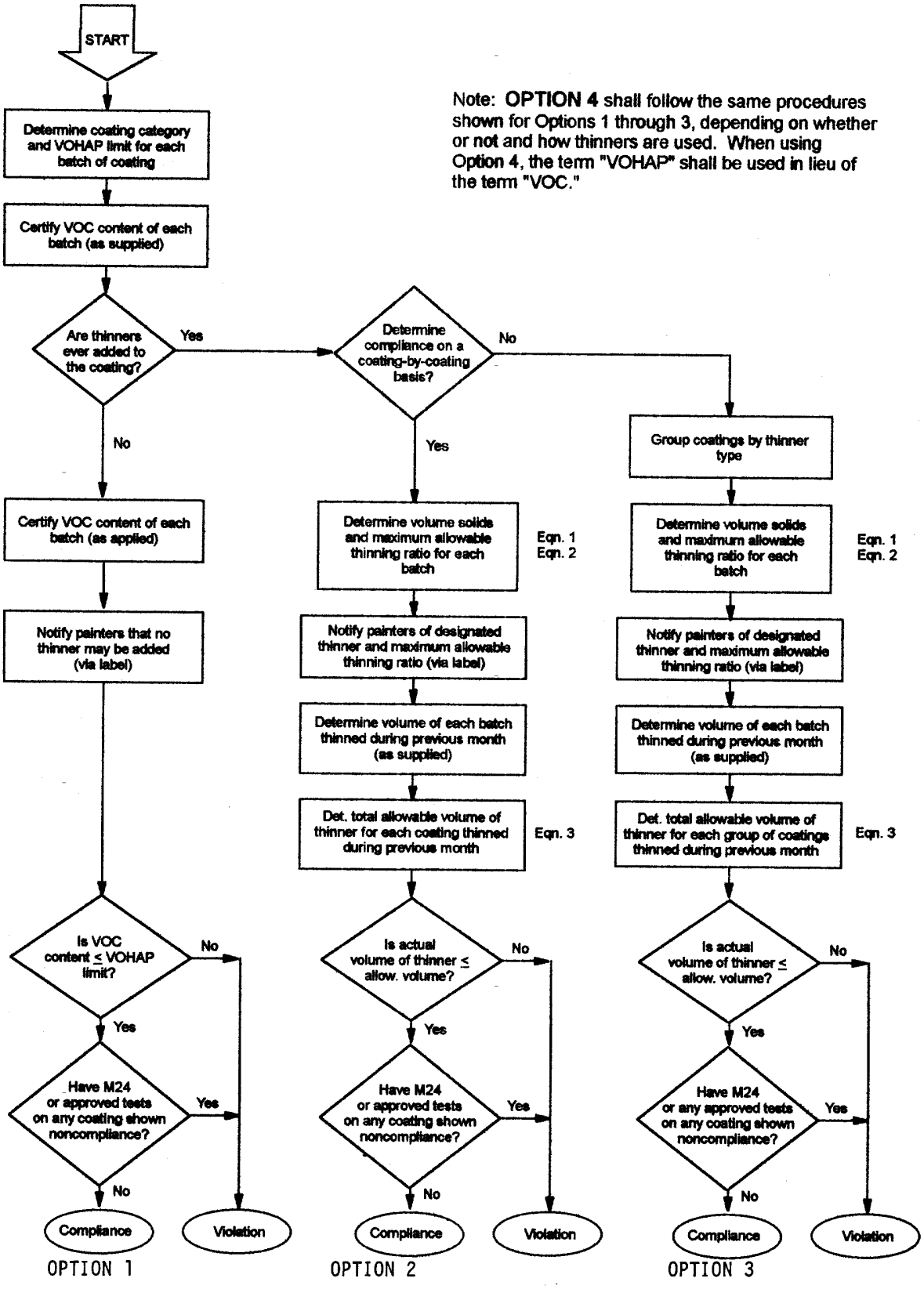
Figure 1 to §63.785 Flow diagram of compliance procedures



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§ 63.786 Test methods and procedures.

(a) For the compliance procedures described in § 63.785(c) (1) through (c)(3), Method 24 of 40 CFR part 60, appendix A, is the definitive method for determining the VOC content of coatings, as supplied or as applied. When a coating or thinner contains exempt compounds that are volatile HAP or VOHAP, the owner or operator shall ensure, when determining the VOC content of a coating, that the mass of these exempt compounds is included.

(b) For the compliance procedure described in § 63.785(c)(4), the Administrator must approve the test method for determining the VOHAP content of coatings and thinners. As part of the approval, the test method must meet the specified accuracy limits indicated below for sensitivity, duplicates, repeatability, and reproducibility coefficient of variation each determined at the 95 percent confidence limit. Each percentage value below is the corresponding coefficient of variation multiplied by 2.8 as in the ASTM Method E180–93: Standard Practice for Determining the Precision of ASTM Methods for Analysis and Testing of Industrial Chemicals (incorporation by reference—see § 63.14).

(1) *Sensitivity.* The overall sensitivity must be sufficient to identify and calculate at least one mass percent of the compounds of interest based on the original sample. The sensitivity is defined as ten times the noise level as specified in ASTM Method D3257–93: Standard Test Methods for Aromatics in Mineral Spirits by Gas Chromatography (incorporation by reference—see § 63.14). In determining the sensitivity, the level of sample dilution must be factored in.

(2) *Repeatability.* First, at the 0.1–5 percent analyte range the results would be suspect if duplicates vary by more than 6 percent relative and/or day to day variation of mean duplicates by the same analyst exceeds 10 percent relative. Second, at greater than 5 percent analyte range the results would be suspect if duplicates vary by more than 5 percent relative and/or day to day variation of duplicates by the same analyst exceeds 5 percent relative.

(3) *Reproducibility.* First, at the 0.1–5 percent analyte range the results would be suspect if lab to lab variation exceeds 60 percent relative. Second, at greater than 5 percent range the results would be suspect if lab to lab variation exceeds 20 percent relative.

(4) Any test method should include information on the apparatus, reagents and materials, analytical procedure, procedure for identification and confirmation of the volatile species in the mixture being analyzed, precision and bias, and other details to be reported. The reporting should also include information on quality assurance (QA) auditing.

(5) Multiple and different analytical techniques must be used for positive identification if the components in a mixture under analysis are not known. In such cases a single column gas chromatograph (GC) may not be adequate. A combination of equipment may be needed such as a GC/mass spectrometer or GC/infrared system. (If a GC method is used, the operator must use practices in ASTM Method E260–91: Standard Practice for Gas Chromatography [incorporation by reference—see § 63.14].)

(c) A coating manufacturer or the owner or operator of an affected source may use batch formulation data as a test method in lieu of Method 24 of Appendix A to 40 CFR part 60 to certify the as-supplied VOC content of a coating if the manufacturer or the owner or operator has determined that batch formulation data have a consistent and quantitatively known relationship to Method 24 results. This determination shall consider the role of cure volatiles, which may cause emissions to exceed an amount based solely upon coating formulation data. Notwithstanding such determination, in the event of conflicting results, Method 24 of appendix A of 40 CFR part 60 shall take precedence.

(d) Each owner or operator of an affected source shall use or ensure that the manufacturer uses the form and procedures mentioned in appendix A of this subpart to determine values for the thinner and coating parameters used in Equations 1 and 2 of this subpart. The owner or operator shall ensure that the coating/thinner manufacturer (or supplier) provides information on the VOC and VOHAP contents of the coatings/thinners and the procedure(s) used to determine these values.

§ 63.787 Notification requirements.

(a) Each owner or operator of an affected source shall comply with all applicable notification requirements in § 63.9(a) through (d) and (i) through (j), with the exception that the deadline specified in § 63.9(b) (2) and (3) shall be extended from 120 days to 180 days. Any owner or operator that receives approval pursuant to § 63.783(c) to use an add-on control system to control coating emissions shall comply with the applicable requirements of § 63.9(e) through (h).

(b) *Implementation plan.* The provisions of § 63.9(a) apply to the requirements of this paragraph.

(1) Each owner or operator of an affected source shall:

(i) Prepare a written implementation plan that addresses each of the subject areas specified in paragraph (b)(3) of this section; and

(ii) Not later than 180 days after the effective date of this subpart, submit the implementation plan to the Administrator for approval along with the notification required by § 63.9(b) (2) or (5), as applicable.

(2) The Administrator may require revisions to the initial plan where the Administrator finds that the plan does not adequately address each subject area listed in paragraph (b)(3) of this section or that the requirements in the plan are unclear.

(3) *Implementation plan contents.* Each implementation plan shall address the following subject areas:

(i) *Coating compliance procedures.* The implementation plan shall include the compliance procedure(s) under § 63.785(c) that the source intends to use.

(ii) *Recordkeeping procedures.* The implementation plan shall include the procedures for maintaining the records required under § 63.788, including the procedures for gathering the necessary data and making the necessary calculations.

(iii) *Transfer, handling, and storage procedures.* The implementation plan shall include the procedures for ensuring compliance with § 63.783(b).

(4) *Major sources that intend to become area sources by the compliance date.* Existing major sources that intend to become area sources by the compliance date December 16, 1996 may choose to submit, in lieu of the implementation plan required under paragraph (b)(1) of this section, a statement that, by the compliance date, the major source intends to obtain and comply with federally enforceable limits on their potential to emit which make the facility an area source. § 63.788 Recordkeeping and reporting requirements.

(a) Each owner or operator of an affected source shall comply with the applicable recordkeeping and reporting requirements in § 63.10 (a), (b), (d), and (f). Any owner that receives approval pursuant to § 63.783(c) to use an add-on control system to control coating emissions shall also comply with the applicable requirements of § 63.10 (c) and (e). A summary of recordkeeping and reporting requirements is provided in Table 3 of this subpart.

(b) *Recordkeeping requirements.* (1) Each owner or operator of an unaffected major source, as described in § 63.781(b), shall record the total volume of coating applied at the source to ships. Such records shall be compiled monthly and maintained for a minimum of 5 years.

(2) Each owner or operator of an affected source shall compile records on a monthly basis and maintain those records for a minimum of 5 years. At a minimum, these records shall include:

(i) All documentation supporting initial notification;

(ii) A copy of the affected source's approved implementation plan;

(iii) The volume of each low-usage-exempt coating applied;

(iv) Identification of the coatings used, their appropriate coating categories, and the applicable VOHAP limit;

(v) Certification of the as-supplied VOC content of each batch of coating;

(vi) A determination of whether containers meet the standards as described in § 63.783(b)(2); and

(vii) The results of any Method 24 of appendix A to 40 CFR part 60 or approved VOHAP measurement test conducted on individual containers of coating, as applied.

(3) The records required by paragraph (b)(2) of this section shall include additional information, as determined by the compliance procedure(s) described in § 63.785(c) that each affected source followed:

(i) *Coatings to which thinning solvent will not be added.* The records maintained by facilities demonstrating compliance using the procedure described in § 63.785(c)(1) shall contain the following information:

(A) Certification of the as-applied VOC content of each batch of coating; and

(B) The volume of each coating applied.

(ii) *Coatings to which thinning solvent will be added—coating-by-coating compliance.* The records maintained by facilities demonstrating compliance using the procedure described in § 63.785(c)(2) shall contain the following information:

(A) The density and mass fraction of water and exempt compounds of each thinner and the volume fraction of solids (nonvolatiles) in each batch, including any calculations;

(B) The maximum allowable thinning ratio (or ratios, if the affected source complies with the cold-weather limits in addition to the other limits specified in Table 2 of this subpart for each batch of coating, including calculations;

(C) If an affected source chooses to comply with the cold-weather limits, the dates and times during which the ambient temperature at the affected source was below 4.5°C (40°F) at the time the coating was applied and the volume used of each batch of the coating, as supplied, during these dates;

(D) The volume used of each batch of the coating, as supplied;

(E) The total allowable volume of thinner for each coating, including calculations; and

(F) The actual volume of thinner used for each coating.

(iii) *Coatings to which the same thinning solvent will be added—group compliance.* The records maintained by facilities demonstrating compliance using the procedure described in § 63.785(c)(3) shall contain the following information:

(A) The density and mass fraction of water and exempt compounds of each thinner and the volume fraction of solids in each batch, including any calculations;

(B) The maximum allowable thinning ratio (or ratios, if the affected source complies with the cold-weather limits in addition to the other limits specified in Table 2 of this subpart) for each batch of coating, including calculations;

(C) If an affected source chooses to comply with the cold-weather limits, the dates and times during which the ambient temperature at the affected source was below 4.5°C (40°F) at the time the coating was applied and the volume used of each batch in the group, as supplied, during these dates;

(D) Identification of each group of coatings and their designated thinners;

(E) The volume used of each batch of coating in the group, as supplied;

(F) The total allowable volume of thinner for the group, including calculations; and

(G) The actual volume of thinner used for the group.

(iv) *Demonstration of compliance through an alternative (i.e., non-Method 24 in appendix A to 40 CFR part 60) test method.* The records maintained by facilities demonstrating compliance using the procedure described in § 63.785(c)(4) shall contain the following information:

(A) Identification of the Administrator-approved VOHAP test method or certification procedure;

(B) For coatings to which the affected source does not add thinning solvents, the source shall record the certification of the as-supplied and as-applied VOHAP content of each batch and the volume of each coating applied;

(C) For coatings to which the affected source adds thinning solvent on a coating-by-coating basis, the source shall record all of the information required to be recorded by paragraph (b)(3)(ii) of this section; and

(D) For coatings to which the affected source adds thinning solvent on a group basis, the source shall record all of the information required to be recorded by paragraph (b)(3)(iii) of this section.

(4) If the owner or operator of an affected source detects a violation of the standards specified in § 63.783, the owner or operator shall, for the remainder of the reporting period during which the violation(s) occurred, include the following information in his or her records:

(i) A summary of the number and duration of deviations during the reporting period, classified by reason, including known causes for which a Federally-approved or promulgated exemption from an emission limitation or standard may apply.

(ii) Identification of the data availability achieved during the reporting period, including a summary of the number and total duration of incidents that the monitoring protocol failed to perform in accordance with the design of the protocol or produced data that did not meet minimum data accuracy and precision requirements, classified by reason.

(iii) Identification of the compliance status as of the last day of the reporting period and whether compliance was continuous or intermittent during the reporting period.

(iv) If, pursuant to paragraph (b)(4)(iii) of this section, the owner or operator identifies any deviation as resulting from a known cause for which no Federally-approved or promulgated exemption from an emission limitation or standard applies, the monitoring report shall also include all records that the source is required to maintain that pertain to the periods during which such deviation occurred and:

(A) The magnitude of each deviation;

(B) The reason for each deviation;

(C) A description of the corrective action taken for each deviation, including action taken to minimize each deviation and action taken to prevent recurrence; and

(D) All quality assurance activities performed on any element of the monitoring protocol.

(c) *Reporting requirements.* Before the 60th day following completion of each 6-month period after the compliance date specified in § 63.784, each owner or operator of an affected source shall submit a report to the Administrator for each of the previous 6 months. The report shall include all of the information that must be retained pursuant to paragraphs (b) (2) through (3) of this section, except for that

information specified in paragraphs (b)(2) (i) through (ii), (b)(2)(v), (b)(3)(i)(A), (b)(3)(ii)(A), and (b)(3)(iii)(A). If a violation at an affected source is detected, the source shall also report the information specified in paragraph (b)(4) of this section for the reporting period during which the violation(s) occurred. To the extent possible, the report shall be organized according to the compliance procedure(s) followed each month by the affected source.

TABLE 1 TO SUBPART II OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART II

Reference	Applies to subpart II	Comment
63.1(a)(1)–(3)	Yes.	
63.1(a)(4)	Yes	Subpart II clarifies the applicability of each paragraph in subpart A to sources subject to subpart II.
63.1(a)(5)–(7)	Yes.	
63.1(a)(8)	No	Discusses State programs.
63.1(a)(9)–(14)	Yes.	
63.1(b)(1)	Yes	§63.781 specifies applicability in more detail.
63.1(b)(2)–(3)	Yes.	
63.1(c)–(e)	Yes.	
63.2	Yes	Additional terms are defined in §63.782; when overlap between subparts A and II occurs, subpart II takes precedence.
63.3	Yes	Other units used in subpart II are defined in that subpart.
63.4	Yes.	
63.5(a)–(c)	Yes.	
63.5(d)	Yes	Except information on control devices and control efficiencies should not be included in the application unless an add-on control system is or will be used to comply with subpart II in accordance with §63.783(c).
63.5(e)–(f)	Yes.	
63.6(a)–(b)	Yes.	
63.6(c)–(d)	Yes	Except §63.784(a) specifies the compliance date for existing affected sources.
63.6(e)–(f)	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with §63.783(c), then these paragraphs do apply.
63.6(g)	No	§63.783(c) specifies procedures for application and approval of alternative means of limiting emissions.
63.6(h)	No	Subpart II does not contain any opacity or visible emission standards.
63.6(i)–(j)	Yes.	
63.7	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with §63.783(c), then this section does apply.
63.8	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with §63.783(c), then this section does apply.
63.9(a)–(d)	Yes	§63.787(a) extends the initial notification deadline to 180 days. §63.787(b) requires an implementation plan to be submitted with the initial notification.
63.9(e)	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with §63.783(c), then this paragraph does apply.
63.9(f)	No	Subpart II does not contain any opacity or visible emission standards
63.9(g)–(h)	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with §63.783(c) then these paragraphs do apply.
63.9(i)–(j)	Yes.	
63.10(a)–(b)	Yes	§63.788(b)–(c) list additional recordkeeping and reporting requirements.
63.10(c)	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with §63.783(c), then this paragraph does apply.
63.10(d)	Yes.	
63.10(e)	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with §63.783(c), then this paragraph does apply.
63.10(f)	Yes.	
63.11	No	If an alternative means of limiting emissions (e.g., an add-on control system) is used to comply with subpart II in accordance with §63.783(c), then this section does apply.
63.12–63.15	Yes.	

TABLE 2 TO SUBPART II OF PART 63.—VOLATILE ORGANIC HAP (VOHAP) LIMITS FOR MARINE COATINGS

Coating category	VOHAP limits [a b c]		
	Grams/liter coating (minus water and exempt compounds)	Grams/liter solids [d]	
		$t \geq 4.5°$ C	$t < 4.5°$ C [e]
General use	340	571	728
Specialty:			
Air flask	340	571	728
Antenna	530	1,439	
Antifoulant	400	765	971
Heat resistant	420	841	1,069
High-gloss	420	841	1,069
High-temperature	500	1,237	1,597

TABLE 2 TO SUBPART II OF PART 63.—VOLATILE ORGANIC HAP (VOHAP) LIMITS FOR MARINE COATINGS—Continued

Coating category	VOHAP limits [a b c]		
	Grams/liter coating (minus water and exempt compounds)	Grams/liter solids [d]	
		$t \geq 4.5°$ C	$t < 4.5°$ C [e]
Inorganic zinc high-build	340	571	728
Military exterior	340	571	728
Mist	610	2,235	
Navigational aids	550	1,597	
Nonskid	340	571	728
Nuclear	420	841	1,069
Organic zinc	360	630	802
Pretreatment wash primer	780	11,095	
Repair and maint. of thermoplastics	550	1,597	
Rubber camouflage	340	571	728
Sealant for thermal spray aluminum	610	2,235	
Special marking	490	1,178	
Specialty interior	340	571	728
Tack coat	610	2,235	
Undersea weapons systems	340	571	728
Weld-through precon. primer	650	2,885	

[a] The limits are expressed in two sets of equivalent units. Either set of limits may be used for the compliance procedure described in § 63.785(c)(1), but only the limits expressed in units of g/L solids (nonvolatiles) shall be used for the compliance procedures described § 63.785(c) (2) through (4).

[b] VOC (including exempt compounds listed as HAP) shall be used as a surrogate for VOHAP for those compliance procedures described in § 63.785(c) (1) through (3).

[c] To convert from g/L to lb/gal, multiply by (3.785 L/gal)(1/453.6 lb/g) or 1/120. For compliance purposes, metric units define the standards.

[d] VOHAP limits expressed in units of mass of VOHAP per volume of solids were derived from the VOHAP limits expressed in units of mass of VOHAP per volume of coating assuming the coatings contain no water or exempt compounds and that the volumes of all components within a coating are additive.

[e] These limits apply during cold-weather time periods, as defined in § 63.782. Cold-weather allowances are not given to coatings in categories that permit over a 40 percent VOHAP content by volume. Such coatings are subject to the same limits regardless of weather conditions.

TABLE 3 TO SUBPART II OF PART 63.—SUMMARY OF RECORDKEEPING AND REPORTING REQUIREMENTS [a b c]

Requirement	All Opts.		Option 1		Option 2		Option 3	
	Rec	Rep	Rec	Rep	Rec	Rep	Rec	Rep
Notification (§ 63.9(a)–(d))	X	X						
Implementation plan (§ 63.787(b)) [d]	X	X						
Volume of coating applied at unaffected major sources (§ 63.781(b))	X							
Volume of each low-usage-exempt coating applied at affected sources (§ 63.781(c))	X	X						
ID of the coatings used, their appropriate coating categories, and the applicable VOHAP limit	X	X						
Determination of whether containers meet the standards described in § 63.783(b)(2)	X	X						
Results of M–24 or other approved tests	X	X						
Certification of the as-supplied VOC content of each batch	X							
Certification of the as-applied VOC content of each batch			X					
Volume of each coating applied			X	X				
Density of each thinner and volume fraction of solids in each batch					X	X		
Maximum allowable thinning ratio(s) for each batch					X	X	X	X
Volume used of each batch, as supplied					X	X	X	X
Total allowable volume of thinner					X	X	X	X
Actual volume of thinner used					X	X	X	X
Identification of each group of coatings and designated thinners							X	X

[a] Affected sources that comply with the cold-weather limits must record and report additional information, as specified in § 63.788(b)(3) (ii)(C), (iii)(C), and (iv)(D).

[b] Affected sources that detect a violation must record and report additional information, as specified in § 63.788(b)(4).

[c] OPTION 4: the recordkeeping and reporting requirements of Option 4 are identical to those of Options 1, 2, or 3, depending on whether and how thinners are used. However, when using Option 4, the term ''VOHAP'' shall be used in lieu of the term ''VOC,'' and the owner or operator shall record and report the Administrator-approved VOHAP test method or certification procedure.

[d] Major sources that intend to become area sources by the compliance date may, in lieu of submitting an implementation plan, choose to submit a statement of intent as specified in § 63.787(b)(4).

Appendix A to Subpart II of Part 63—VOC Data Sheet [1]

Properties of the Coating ''As Supplied'' by the Manufacturer [2]

Coating Manufacturer: _____
Coating Identification: _____
Batch Identification: _____

_____

* Incorporation by reference—see § 63.14.

[1] Adapted from EPA–340/1–86–016 (July 1986), p. II–2.

[2] The subscript ''s'' denotes each value is for the coating ''as supplied'' by the manufacturer.

Supplied To: _____

Properties of the coating as supplied [1] to the customer:

A. Coating Density: $(D_c)_s$ ____ g/L
[ ] ASTM D1475–90 * [ ] Other [3]
B. Total Volatiles: $(m_v)_s$ ____ Mass Percent
[ ] ASTM D2369–93 * [ ] Other [3]
C. Water Content: 1. $(m_w)_s$ ____ Mass Percent
[ ] ASTM D3792–91 * [ ] ASTM D4017–90 * [ ] Other [3]
2. $(v_w)_s$ ____ Volume Percent

_____

[3] Explain the other method used under ''Remarks.''

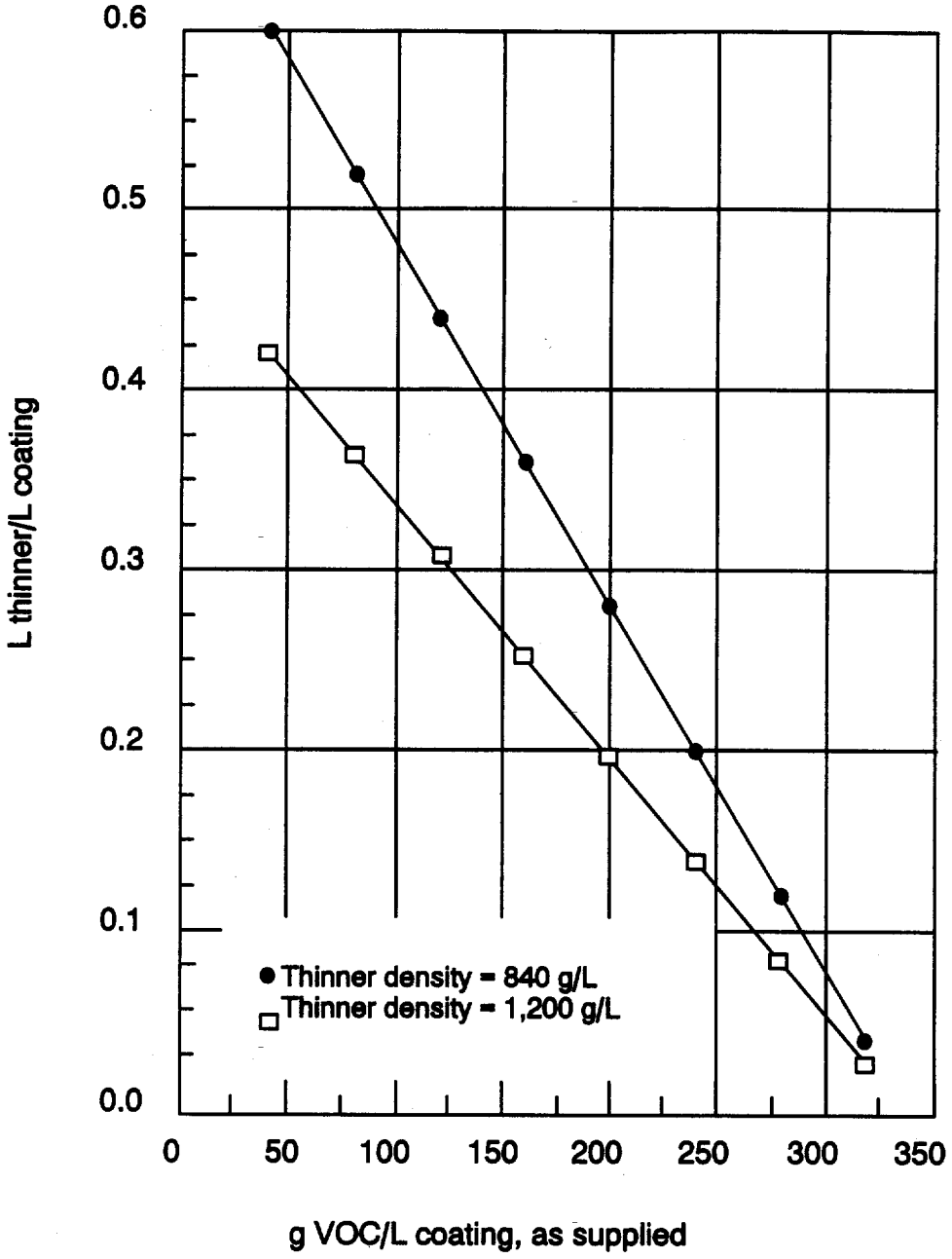
[ ] Calculated [ ] Other [3]
D. Organic Volatiles: $(m_o)_s$ ____ Mass Percent
E. Nonvolatiles: $(v_n)_s$ ____ Volume Percent
[ ] Calculated [ ] Other [3]
F. VOC Content $(VOC)_s$:
1. ____ g/L solids (nonvolatiles)
2. ____ g/L coating (less water and exempt compounds)
G. Thinner Density: D_{th} ____ g/L
ASTM ____ [ ] Other [3]

Remarks: (use reverse side)

Signed: _____ Date: ____

BILLING CODE 6560–50–P

Appendix B To Subpart II of Part 63 -- Maximum Allowable Thinning Rates As A Function Of As Supplied VOC Content And Thinner Density[a,b]



[a] These graphs represent maximum allowable thinning ratios for general use coatings without water or exempt compounds.

[b] The average density of the volatiles in the coating was assumed = 840 g solvent/L solvent.

[FR Doc. 95–29748 Filed 12–14–95; 8:45 am]
BILLING CODE 6560–50–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[ET Docket No. 94–32; FCC 95–454]

In-Flight Phone Corporation's Pioneer's Preference Request

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Third Report and Order (Third R&O)*, the Commission denies In-Flight Phone Corporation's (In-Flight's) request for a pioneer's preference in the General Wireless Communications Service (GWCS) at 4660–4685 MHz. The Commission finds that the GWCS service rules are not a reasonable outgrowth of In-Flight's ground-to-air programming service proposal, that In-Flight failed to demonstrate the technical feasibility of its proposal in the 4660–4685 MHz band, and that In-Flight's proposed ground-to-air programming service is not sufficiently innovative to warrant a preference in any band. This action is intended to affirm the Commission's policy of awarding pioneer's preferences only for innovations of some significance.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Tom Derenge, (202) 418–2451 or Rodney Small, (202) 418–2452, Office of Engineering and Technology, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third R&O* adopted November 1, 1995, and released December 5, 1995. This action will not add to or decrease the public reporting burden. The full text of the Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Third R&O

1. In-Flight originally filed its pioneer's preference request in the narrowband Personal Communications Services proceeding, ET Docket No. 92–100. It sought a preference in the 901–902 MHz and 940–941 MHz bands for a live ground-to-air audio news, information, and entertainment programming service for airline passengers. However, because the rules adopted in Docket 92–100 were not related to In-Flight's proposal, no action was taken on its pioneer's preference request.

2. In February 1995, the Commission adopted a *First Report and Order and Second Notice of Proposed Rulemaking* in Docket 94–32, 60 FR 13102 (March 10, 1995), reallocating 50 megahertz of Federal Government spectrum at 2390–2400, 2402–2417, and 4660–4685 MHz to non-Government use; and proposing that the 4660–4685 MHz band be used by the General Wireless Communications Service (GWCS).

3. In March 1995, In-Flight filed a Petition for Declaratory Ruling, requesting that its pending pioneer's preference request be considered in the GWCS. In-Flight also stated that it would provide video, as well as audio, services as a GWCS licensee. The Petition was placed on Public Notice on April 28, 1995; however, no comments were filed on the Public Notice.

4. On June 8, 1995, in response to the Commission's *Third Report and Order* in the pioneer's preference review proceeding, ET Docket No. 93–266, 60 Fed. Reg. 32116 (June 20, 1995), In-Flight filed a Supplement to its pioneer's preference request. In its Supplement, In-Flight argued that it was not likely to recover its investment in developing what it now referred to as its ''aircraft audio and video programming service'' unless it received a pioneer's preference, and also requested that its preference request be placed on public notice. On June 16, 1995, In-Flight's preference request, including the Supplement, was placed on Public Notice and assigned file number PP–88 in Docket 94–32.

5. On July 3, 1995, Claircom Licensee Corporation filed an opposition to PP–88, in which it stated that In-Flight's programming service is not innovative. On July 13, 1995, In-Flight filed a reply to Claircom's opposition. On July 31, 1995, the Commission adopted a *Second Report and Order* in Docket 94–32, 60 Fed. Reg. 40712 (August 9, 1995), allocating the 4660–4685 MHz band for the GWCS and adopting service rules.

6. In the *Third R&O*, the Commission found that—inconsistent with the pioneer's preference rules—the GWCS service rules are not a reasonable outgrowth of In-Flight's ground-to-air programming service proposal. Additionally, the Commission found that In-Flight failed to demonstrate the technical feasibility of its proposal in the 4660–4685 MHz band. The Commission stated that In-Flight's technical achievements in developing and testing equipment in the 901–902 MHz and 940–941 MHz bands are not directly relevant to the 4660–4685 MHz band, due to differences in propagation. Finally, the Commission found that In-Flight's proposed ground-to-air programming service is not sufficiently innovative to warrant a preference in any band. The Commission concluded that In-Flight did not demonstrate that its technological developments are innovative given the state-of-the-art technologies used in providing 800 MHz air-ground radiotelephone service.

7. Accordingly, *it is ordered*, That the pioneer's preference request (PP–88) filed by In-Flight Phone Corporation in this proceeding is denied. *It is further ordered*, That the request for pioneer's preference filed by In-Flight Phone Corporation in ET Docket No. 92–100 *is dismissed as moot. It is further ordered*, That the petition for declaratory ruling filed by In-Flight Phone Corporation is granted in part and denied in part.

List of Subjects in 47 CFR Part 1

Pioneer's preference, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–30550 Filed 12–14–95; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 88–40; RM–6035, RM–6349, RM–6350]

Radio Broadcasting Services; Jacksonville, Pine Knoll Shores, and Harkers Island, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a Petition for Reconsideration filed by Down East Radio to the extent of deleting Channel 272A from Pine Knoll Shores, North Carolina. *See* 57 FR 19809, May 8, 1992. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 22, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 776–1654.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 88–40, adopted November 9, 1995, and released December 8, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington,

DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc. (202) 857–3800, 1919 M Street, NW., Room 246, 2100 M Street NW., Suite 140, Washington, DC 20037.

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—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Pine Knoll Shores, Channel 272A.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–30515 Filed 12–14–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–123; RM–8669]

Radio Broadcasting Services; Winona, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of OARA, Inc., allots Channel 274A to Winona, Texas, as the community's first local aural transmission service. *See* 60 FR 38785, July 28, 1995. Channel 274A can be allotted to Winona, Texas, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 274A at Winona are 32–29–22 and 95–10–01. With this action, this proceeding is terminated.

DATES: Effective January 22, 1996. The window period for filing applications will open on January 22, 1996, and close on February 22, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–123, adopted November 27, 1995, and released December 7, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Winona, Channel 274A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–30513 Filed 12–14–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–124; RM–8573]

Radio Broadcasting Services; Atlantic, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Wireless Communications Corp., allots Channel 239C3 to Atlantic, Iowa, as the community's first local FM service. *See* 60 FR 39308, August 2, 1995. Channel 239C3 can be allotted to Atlantic in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 41–24–00 North Latitude and 95–00–54 West Longitude. With this action, this proceeding is terminated.

DATES: Effective January 22, 1996. The window period for filing applications will open on January 22, 1996, and close on February 22, 1996.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–124, adopted November 14, 1995, and released December 8, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Atlantic, Channel 239C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–30514 Filed 12–14–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 930932–3314; I.D. 120795B]

Summer Flounder Fishery; Commercial Quota Transfer from Maryland to New York

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

ACTION: Commercial quota transfer.

SUMMARY: NMFS announces that the State of Maryland is making two transfers totaling 50,000 lb (22,680 kg) of commercial summer flounder quota to the State of New York. NMFS adjusted the quotas and announces the revised commercial quota for each state involved.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508–281–9221.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP) are found at 50 CFR part 625. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percentage allocated to each state is described in § 625.20.

The commercial quota for summer flounder for the 1995 calendar year was set equal to 14,690,407 lb (6,663,456 kg), and the allocations to each state were published February 16, 1995 (60 FR 8958). At that time, Maryland was allocated a quota of 299,551 lb (135,874 kg), and New York was allocated a quota of 1,123,374 lb (509,554 kg). On November 17, 1995, Maryland transferred 50,000 lb (22,680 kg) of its commercial quota to New York (60 FR 57685). As a result of that transfer, the commercial quotas for Maryland and New York were set to equal 249,551 lb (113,194 kg), and 1,173,374 lb (532,233 kg), respectively.

The final rule implementing Amendment 5 to the FMP was published December 17, 1993 (58 FR 65936), and allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS (Regional Director), to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1), in the evaluation of requests for quota transfers or combinations.

Section 625.20(f)(3) further states that a state may not submit a request to transfer or combine quota if a request to which it is a party is pending before the Regional Director. While New York is receiving two transfers from Maryland, the Regional Director considered and approved the first transfer request before the second transfer request was submitted. For efficiency's sake, these two transfers are being filed together.

Maryland has agreed to make two additional transfers of commercial quota to New York. The first is for 30,000 lb (13,608 kg) and the second for 20,000 lb (9,072 kg). The original transfer of 30,000 lb (13,608 kg) was arranged to prevent a state closure and allow federally-permitted vessels to land summer flounder that would otherwise be discarded. Subsequently, landings reports indicated that 30,000 lb (13,608 kg) would not be sufficient to prevent a closure, and therefore, a second transfer was agreed upon. As a result, NMFS is filing these transfers totalling 50,000 lb (22,680 kg). The Regional Director has determined that the criteria set forth in § 625.20(f)(1) have been met, and publishes this notification of quota transfers. The revised quotas for the calendar year 1995 are: Maryland, 199,551 lb (90,515 kg); and New York, 1,223,374 lb (554,913 kg).

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 2 to the FMP regarding the effects of summer flounder fishing activity on the human environment. Amendment 2 established procedures for setting an annual coastwide commercial quota for summer flounder and a formula for determining commercial quotas for each state. The quota transfer provision was established by Amendment 5 to the FMP and the environmental assessment prepared for Amendment 5 found that the action had no significant impact on the environment. Under section 6.02b.3(b)(i)(aa) of NOAA Administrative Order 216–6, this action is categorically excluded from the requirement to prepare additional environmental analyses. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

Classification

This action is taken under 50 CFR part 625 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 12, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–30599 Filed 12–14–95; 2:06 pm]

BILLING CODE 3510–22–F

50 CFR Part 641

[Docket No. 95081020–5286–04; I.D. 082395A]

RIN 0648–AG29

Reef Fish Fishery of the Gulf of Mexico; Amendment 11; OMB Control Numbers

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement certain provisions of Amendment 11 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). These provisions revise the framework procedure for modifying management measures, restrict the sale/purchase of reef fish harvested from the exclusive economic zone (EEZ) to permitted reef fish vessels/dealers, allow transfer of reef fish permits and fish trap endorsements under specified circumstances, implement a new reef fish permit moratorium, and require charter vessel and headboat permits. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirement contained in this rule. The intended effects of the final rule are to improve procedures for timely management, relieve restrictions and hardships, and enhance enforceability of the regulations.

EFFECTIVE DATES: The amendments in this rule are effective January 1, 1996, except for the amendments to, or additions of, the following sections, which are effective April 1, 1996: In § 641.4, paragraph (a)(3), the new paragraph (o), and the second amendment of paragraph (a)(4); in § 641.7, paragraphs (g), (r), and (x), (gg), and (jj)(1), and the second amendment of paragraph (bb); § 641.10, paragraphs (b)(4), (b)(6), and (b)(7).

ADDRESSES: Comments regarding the collection-of-information requirement contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Michael E. Justen or Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Based on a preliminary evaluation of Amendment 11 at the beginning of formal agency review, NMFS disapproved three of its measures after determining that they were inconsistent with the provisions of the Magnuson Act and other applicable law. NMFS published a proposed rule to implement

the remaining measures of Amendment 11 (60 FR 47341, September 12, 1995). The rationale for the remaining measures of Amendment 11, as well as the reasons for the disapproval of the three Amendment 11 measures at the beginning of formal agency review, are contained in the preamble of the proposed rule and are not repeated here. On November 24, 1995, NMFS approved the remaining measures of Amendment 11; this final rule implements those approved measures.

Comments and Responses

Eight individuals submitted comments on Amendment 11 and the proposed rule as follows.

Comment: One commenter opposed allowing fish trap endorsements to be transferred. This final rule permits a fish trap endorsement in effect on September 12, 1995, to be transferred to an otherwise ineligible vessel if that vessel participated in the fishery and reported landings of reef fish from traps in the EEZ from November 20, 1992, through February 6, 1994. The commenter noted that NMFS had provided information on the moratorium prior to these fishermen entering the fishery. Therefore, these fishermen should have known that they may be ineligible for a fish trap endorsement under Amendment 5 and should not be allowed to qualify for a transfer under Amendment 11.

Response: NMFS agrees that proper notice of the moratorium was provided. However, the Council is free to revisit previously decided issues any time new information or considerations become available. Indeed, as noted on page 29 of Amendment 11, whatever permanent measure replaces the moratorium may be more restrictive, including a possible ban on fish traps altogether. However, the amendment further states that some of the current fish trap endorsements are not being used, and certain fishermen invested in gearing up for this fishery unaware of the moratorium notwithstanding its widespread announcement. The limited ability to transfer which is implemented here will restrain effort at the level which the Council previously established, yet provide an equitable resolution of these issues.

Comment: One commenter indicated that the new reef fish permit moratorium on January 1, 1996, would prohibit him from entering the fishery. Therefore, the start of the new moratorium should occur after a window of opportunity was provided for him to get a reef fish permit.

Response: The existing reef fish permit moratorium, which was imposed to prevent continued speculative entry while the Council considered other reef fish effort management alternatives, expires on December 31, 1995. The alternative for red snapper chosen by the Council and approved by NMFS, was contained in Amendment 8, which established an individual transferable quota system. The Council is now considering establishing a limited access system for the other species in the reef fish complex. The Council determined that imposing a new moratorium effective upon expiration of the old moratorium was needed to stabilize participation in the fishery during these considerations. The Council considered options, including allowing the moratorium to expire, but felt that this would unnecessarily disrupt the fishery. The Council also recognized that the new moratorium should not be continued indefinitely. In Amendment 11, the Council proposed and NMFS implemented a new moratorium to be in effect for not more than 5 years, that is, through December 31, 2000.

Comment: Three commenters supported the one-time transfer of existing fish trap endorsements.

Response: NMFS agrees with these commenters and has approved these management measure for the reasons previously stated.

Comment: Four commenters supported allowing the transfer of reef fish permits and two supported allowing the transfer of fish trap endorsements in the event of death or disability.

Response: NMFS agrees with these comments and has approved these management measures.

Comment: One commenter objected to the charter vessel/headboat permit requirement. The commenter believes that (1) the current regulations adequately define when a vessel is operating as a charter vessel or headboat and (2) headboats can be readily identified by their required U.S. Coast Guard Certificate of Inspection.

Response: NMFS does not dispute the information contained in the comment. For-hire vessels (i.e., charter vessels and headboats) constitute an important part of the recreational fishery for reef fish. However, accurate information is not available on how many for-hire vessels are engaged in the reef fish fishery. As stated in Amendment 11, the Council perceives the following benefits of a charter vessel/headboat permit: (1) Determination of the number and distribution of charter vessels/headboats, (2) compilation of a mailing list that could be used to distribute information of interest to the recreational fishery, (3) identification of the universe of recreational for-hire vessels in the event that logbooks or other data collection systems are implemented or that limited access for the recreational for-hire sector of the fishery is implemented, and (4) creation of a means of curbing the activities of repeat violators, that is, through permit sanctions. Accordingly, NMFS implemented the Council's requirement for charter vessel/headboat permits.

Comments Outside the Scope of the Proposed Rule

Comment: One commenter supported the 2.0 biological generation time provision for the framework procedure that was previously disapproved by NMFS based on a preliminary review of Amendment 11. The commenter felt that the existing 1.5 generation time limit was arbitrary.

Response: NMFS disapproved this provision based on a preliminary review of Amendment 11. This comment, therefore, is outside the scope of the proposed rule.

Changes from the Proposed Rule

Publication of the final rule to implement Amendment 8 to the FMP (60 FR 61200, November 29, 1995) requires changes from the proposed rule in this final rule. In this final rule, some of the changes that are effective January 1, 1996, recodify, restate, or otherwise modify paragraphs that are being changed in the Amendment 8 final rule with an effective date of April 1, 1996. For clarity, this final rule contains revisions/additions, effective April 1, 1996, that supersede revisions/additions contained in the final rule to implement Amendment 8 that were to be effective April 1, 1996, as follows: (1) Amendment 8's revised first sentence of § 641.4(a)(2) is superseded by this final rule's revised first sentence of § 641.4(a)(4); (2) Amendment 8's revised § 641.7(g), (r), and (bb) are superseded by this final rule's § 641.7(g), (r), and (bb); and (3) Amendment 8's added § 641.7(q) is superseded by this final rule's added § 641.7(o).

For compatibility with the final rule to implement Amendment 8, this final rule changes the designation of paragraphs in § 641.7.

At § 641.4(a)(3), the requirement for a charter vessel/headboat permit is clarified. A vessel that is used as a charter vessel or headboat in a fishery other than reef fish is not required to have a reef fish charter vessel/headboat permit, in addition to its reef fish commercial permit, to fish for reef fish under the commercial quota. A prohibition is added at § 641.7(x)

regarding the requirement for charter vessel/headboat permits.

At § 641.4(n)(4), the criteria for eligibility to receive a transferred fish trap endorsement is clarified. An owner of a vessel that had qualifying landings for such transfer may obtain by transfer a fish trap endorsement for that vessel even if the owner currently has a fish trap endorsement based on the landings of another vessel.

This final rule removes § 641.24(g). The management measure currently in § 641.24(g) is included in § 641.28(a) in this final rule.

Classification

The Regional Director, Southeast Region, NMFS, determined that Amendment 11 is necessary for the conservation and management of the reef fish fishery of the Gulf of Mexico and that it is consistent with the Magnuson Act and other applicable law, with the exception of those measures that were previously disapproved. (See the proposed rule (60 FR 47341, September 12, 1995) for a discussion of the disapproved measures.)

This action has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an initial regulatory flexibility analysis (IRFA) as part of its regulatory impact review of Amendment 11. The IRFA described the impacts the proposed rule would have on small entities, if adopted. Those impacts were summarized in the proposed rule. NMFS has adopted the IRFA as a final regulatory flexibility analysis without change.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act, specifically, applications for charter vessel/headboat permits. This collection has been approved by OMB under OMB control number 0648–0205. The public reporting burden for this collection of information is estimated to average 20 minutes per response. This rule revises the collections of information relating to applications for commercial vessel permits and applications for fish trap endorsements, which are currently approved under OMB control number 0648–0205 and have public reporting burdens estimates of 20 minutes per response, each. The reporting burden estimates are unchanged. This rule repeats the collection-of-information requirement for dealer permits, which is currently approved under OMB control number 0648–0205 and has a public reporting burden estimate of 5 minutes per response. Each of the above reporting burden estimates includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding any of these reporting burden estimates or any other aspects of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

The provisions in this final rule that implement a new reef fish permit moratorium must be effective January 1, 1996, immediately following the current permit moratorium. Otherwise, the number of vessels with reef fish permits could increase, thus subverting the intended effects of the new moratorium, as discussed in Amendment 11 and the proposed rule. Accordingly, under section 553(d)(3) of the Administrative Procedure Act (APA), the Assistant Administrator for Fisheries, NOAA (AA), finds for good cause that it is contrary to the public interest to delay for 30 days the effective date of the provisions for a new reef fish permit moratorium.

The provisions in this final rule that allow transfer of reef fish permits and fish trap endorsements relieve restrictions. Accordingly, under section 553(d)(1) of the APA, a 30-day delay in effectiveness of these provisions is not required.

All permitted reef fish dealers and all owners of permitted reef fish vessels were advised in writing on or about December 1, 1995, that the provisions in this final rule that restrict the sale/purchase of reef fish harvested from the EEZ to permitted reef fish vessels/dealers would be implemented on January 1, 1996. Thus, actual notice approximately 30 days prior to effectiveness has been provided to persons affected. In view of the proliferation of effective dates for changes to the reef fish regulations under Amendments 8 and 11, that is, November 24, 1995, and April 1, 1996, under Amendment 8 and January 1 and April 1, 1996, under Amendment 11, avoidance of yet another effective date is highly desirable for ease of understanding and transition to the new management measures for reef fish. Accordingly, under section 553(d)(3) of the APA, the AA finds for good cause that it is contrary to the public interest to delay for 30 days the effective date of the restrictions on sale/purchase of reef fish harvested from the EEZ.

To allow time for the dissemination, completion, receipt, and processing of applications, and for issuance of permits, NMFS makes the provisions of this final rule requiring charter vessel/headboat permits effective on April 1, 1996.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 7, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.4, paragraphs (o) and (p) are removed; paragraphs (a) and (b), the first sentence of paragraph (f)(1), the first sentence of paragraph (h), and paragraphs (m) and (n) are revised to read as follows. (Note: This amendment supersedes the amendment to §641.4(a)(2) that was published on November 29, l995 (60 FR 61207.))

§ 641.4 Permits and fees.

(a) *Applicability*—(1) *Commercial vessel permits.*

(i) As a prerequisite to selling reef fish in or from the EEZ and to be eligible for exemption from the bag limits specified in § 641.24(b) for reef fish in or from the EEZ, an annual commercial vessel permit for reef fish must be issued to the vessel and must be on board. However, see paragraph (m) of this section regarding a moratorium on commercial vessel permits.

(ii) To obtain or renew a commercial vessel permit, the owner or operator of the vessel must have derived more than 50 percent of his or her earned income from commercial fishing, that is, sale of the catch, or from charter or headboat operations during either of the 2 calendar years preceding the application. (See paragraph (m)(3) of this section for a limited exception to this requirement.) For a vessel owned by a corporation or partnership, the earned income requirement must be met by an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator. A commercial vessel permit issued upon the qualification of

an operator is valid only when that person is the operator of the vessel.

(iii) A qualifying owner or operator of a charter vessel or headboat may obtain a commercial vessel permit. However, a charter vessel or headboat must adhere to the bag limits when operating as a charter vessel or headboat.

(2) *Fish trap endorsements.* To possess or use a fish trap in the EEZ, a commercial vessel permit for reef fish with a fish trap endorsement must be issued to the vessel and must be on board. However, see paragraph (n) of this section regarding a moratorium on fish trap endorsements. In addition, a color code for marking the vessel and trap buoys must be obtained from the Regional Director—see § 641.6.

(3) [Reserved]

(4) *Dealer permits.* A dealer who receives from a fishing vessel reef fish harvested from the EEZ must obtain an annual dealer permit. To be eligible for such permit, an applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(b) *Application for a vessel permit*—(1) An application for a commercial vessel permit or a charter vessel/headboat permit must be submitted to the Regional Director and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. After receipt of a complete application, at least 30 days must be allowed for processing the application and issuing a permit. All permits are mailed to owners, whether the applicant is an owner or an operator.

(2) An applicant must provide the following:

(i) A copy of the vessel's valid U.S. Coast Guard certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(ii) The vessel's name and official number.

(iii) The name, address, telephone number, and other identifying information of the owner and of the applicant, if other than the owner.

(iv) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas requested by the Regional Director.

(v) Any other information that may be necessary for the issuance or administration of the permit.

(3) In addition, an applicant for a commercial vessel permit—

(i) Must provide documentation of earned income that meets the criteria of paragraph (a)(1)(ii) of this section; and

(ii) If fish traps will be used to harvest reef fish, must provide the following information:

(A) The number, dimensions, and estimated cubic volume of the fish traps that will be used; and

(B) The applicant's desired color code for use in identifying his or her vessel and buoys (white is not an acceptable color code).

* * * * *

(f) * * * (1) The Regional Director will issue a permit at any time to an applicant if the application is complete and, in the case of an application for a commercial vessel permit, the applicant meets the earned income requirement specified in paragraph (a)(1)(ii) of this section. * * *

* * * * *

(h) * * * A vessel permit or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided under paragraph (m) of this section for a commercial vessel permit or as provided under paragraph (n) of this section for a fish trap endorsement. * * *

* * * * *

(m) *Moratorium on commercial vessel permits.* This paragraph (m) is effective through December 31, 2000.

(1) Except for an application for renewal of an existing commercial vessel permit or as provided in paragraphs (m)(2) and (m)(3) of this section, no applications for commercial vessel permits will be accepted.

(2) An owner of a permitted vessel may transfer the commercial vessel permit to another vessel owned by the same entity by returning the existing permit with an application for a commercial vessel permit for the replacement vessel.

(3) An owner whose earned income qualified for the commercial vessel permit may transfer that permit to the owner of another vessel or to the new owner when he or she sells the permitted vessel. The owner of a vessel that is to receive the transferred permit must return the existing permit to the Regional Director with an application for a commercial vessel permit for his or her vessel. Such new owner may receive a commercial vessel permit for that vessel, and renew it for the first calendar year after obtaining it, without meeting the earned income requirement of paragraph (a)(1)(ii) of this section. However, to renew the commercial vessel permit for the second calendar year after the transfer, the new owner must meet that earned income requirement not later than the first calendar year after the permit transfer takes place.

(4) A commercial vessel permit that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the Regional Director within 1 year of the expiration date of the permit.

(n) *Moratorium on fish trap endorsements.* The provisions of this paragraph (n) are effective through February 7, 1997.

(1) A fish trap endorsement will not be issued or renewed unless the current owner of the commercially permitted vessel for which the endorsement is requested has a record of landings of reef fish from fish traps in the EEZ of the Gulf of Mexico during 1991 or 1992, as reported on fishing vessel logbooks received by the Science and Research Director on or before November 19, 1992. An owner will not be issued fish trap endorsements for vessels in numbers exceeding the number of vessels for which the owning entity had the requisite reported landings in 1991 or 1992.

(2) An owner of a vessel with a fish trap endorsement may transfer the endorsement to another vessel owned by the same entity by returning the existing endorsement with an application for an endorsement for the replacement vessel.

(3) A fish trap endorsement is not transferable upon change of ownership of a vessel with a fish trap endorsement, except as follows:

(i) A fish trap endorsement is transferable when the change of ownership of the permitted vessel is from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(ii) In the event that a vessel with a fish trap endorsement has a change of ownership that is directly related to the disability or death of the owner, the Regional Director may issue a fish trap endorsement, temporarily or permanently, with the reef fish commercial permit that is issued for the vessel under the new owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Change of ownership of a vessel with a commercial reef fish permit upon disability or death of an owner is considered a purchase of a permitted vessel and paragraph (m)(3) of this section applies regarding a commercial reef fish permit for the vessel under the new owner.)

(4) A fish trap endorsement in effect on September 12, 1995, may be transferred to a vessel with a commercial vessel permit whose owner has a record of landings of reef fish from fish traps in the EEZ, as reported on fishing vessel logbooks received by the Science and Research Director from November 20, 1992, through February 6, 1994, and who was unable to obtain a fish trap endorsement for such vessel under paragraph (n)(1) of this section. The owner of a vessel that is to receive the transferred endorsement must return the currently endorsed commercial permit and the unendorsed permit to the Regional Director with an application for a fish trap endorsement for his or her vessel. Revised commercial permits will be returned to each owner.

(5) If a fish trap endorsement is transferred under paragraph (n)(3) or (n)(4) of this section, the owner of the vessel to which the endorsement is transferred may renew the endorsement without regard to the requirement of paragraph (n)(1) of this section regarding a record of landing of reef fish from fish traps.

(6) A fish trap endorsement that is not renewed or that is revoked will not be reissued. A fish trap endorsement is considered to be not renewed when an application for renewal is not received by the Regional Director within 1 year of the expiration date of the permit.

3. In § 641.4, effective April 1, 1996, paragraphs (a)(3) and (o) are added, and the first sentence of newly revised paragraph (a)(4) is revised to read as follows:

§ 641.4 Permits and fees.

(a) * * *

(3) *Charter vessel/headboat permits.* For a person on board a vessel that is operating as a charter vessel or headboat to fish for or possess a reef fish in or from the EEZ, a charter vessel/headboat permit for reef fish must be issued to the vessel and must be on board.

(4) * * * A dealer who receives from a fishing vessel reef fish harvested from the EEZ, or red snapper from adjoining state waters harvested by or possessed on board a vessel with a commercial permit issued under this section, must obtain an annual dealer permit. * * *

* * * * *

(o) *Permit conditions.* (1) As a condition of a commercial vessel permit issued under this section, without regard to where red snapper are harvested or possessed, a vessel with a commercial permit—

(i) Must comply with the red snapper individual transferrable quota requirements of § 641.10(b).

(ii) May not transfer or receive red snapper at sea.

(iii) Must maintain red snapper with head and fins intact through landing, and the exceptions to that requirement contained in § 641.21(b)(3) and (b)(4) do not apply to red snapper. Such red snapper may be eviscerated, gilled, and scaled but must otherwise be maintained in a whole condition.

(2) As a condition of a dealer permit issued under this section, without regard to where red snapper are harvested or possessed, a permitted dealer must comply with the red snapper individual transferrable quota requirements of § 641.10(b).

§ 641.5 [Amended]

4. In § 641.5, in the first sentence of paragraph (c), the phrase ''reef fish permit'' is removed and the phrase ''commercial reef fish permit'' is added in its place.

5. In § 641.7, paragraphs (a), (s), (y), and (bb) are revised and new paragraphs (ll) and (mm) are added to read as follows:

§ 641.7 Prohibitions.

* * * * *

(a) Falsify information specified in § 641.4(b) or (c) on an application for a permit or endorsement, or information regarding transfer or revision of a permit or endorsement.

* * * * *

(s) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a reef fish—

(1) Harvested from the EEZ by a vessel that does not have a valid commercial permit, or

(2) Possessed under the bag limits—as specified in § 641.28(a).

* * * * *

(y) Use or possess in the EEZ a fish trap without a valid fish trap endorsement, as specified in § 641.4(a)(2).

* * * * *

(bb) Without a dealer permit, receive from a fishing vessel, by purchase, trade, or barter, reef fish harvested from the EEZ, as specified in § 641.4(a)(4).

* * * * *

(ll) Sell, trade, or barter or attempt to sell, trade, or barter reef fish harvested on board a vessel for which a commercial permit has been issued under § 641.4 to a dealer that does not have a permit issued under § 641.4, as specified in § 641.28(b).

(mm) As a permitted dealer, purchase, trade, or barter or attempt to purchase, trade, or barter reef fish harvested on board a vessel that does not have a commercial permit issued under § 641.4, as specified in § 641.28(c).

6. In § 641.7, effective April 1, 1996, paragraphs (g), (r), and newly revised (bb) are revised and paragraph (x) is added to read as follows:

§ 641.7 Prohibitions.

* * * * *

(g) Possess a finfish without its head and fins intact, as specified in § 641.21(b); or a red snapper without its head and fins intact, as specified in § 641.4(o)(1)(iii).

* * * * *

(r) Transfer reef fish at sea, as specified in § 641.24(f); or transfer or receive red snapper at sea, as specified in § 641.4(o)(1)(ii).

* * * * *

(x) Own or operate a vessel that fishes for or possesses reef fish in or from the EEZ, when such vessel is operating as a charter vessel or headboat without a charter vessel/headboat permit, as specified in § 641.4(a)(3).

* * * * *

(bb) Without a dealer permit, receive from a fishing vessel, by purchase, trade, or barter, reef fish harvested from the EEZ, or red snapper from adjoining state waters harvested by or possessed on board a vessel with a commercial permit, as specified in § 641.4(a)(4).

* * * * *

§ 641.24 [Amended]

7. In § 641.24, paragraph (g) is removed.

§§ 641.28 and 641.29 [Redesignated as §§ 641.29 and 641.30]

8. Sections 641.28 and 641.29 are redesignated as §§ 641.29 and 641.30, respectively, and new § 641.28 is added to read as follows:

§ 641.28 Restrictions on sale/purchase.

(a) A reef fish harvested in the EEZ on board a vessel that does not have a valid commercial permit, as required by § 641.4(a)(1), or possessed under the bag limits specified in § 641.24(b), may not be purchased, bartered, traded, or sold, or attempted to be purchased, bartered, traded, or sold.

(b) A reef fish harvested on board a vessel for which a valid commercial permit has been issued under § 641.4 may be sold, traded, or bartered or attempted to be sold, traded, or bartered only to a dealer who has a valid permit issued under § 641.4.

(c) A reef fish harvested in the EEZ may be purchased, traded, or bartered or attempted to be purchased, traded, or bartered by a dealer who has a valid permit issued under § 641.4 only from a vessel for which a valid commercial permit has been issued under § 641.4.

§§ 641.2, 641.23, 641.24, 641.25, and 641.27 [Amended]

9. In addition to the amendments set forth above, effective January 1, 1996, in 50 CFR part 641 remove the word ''permit'' and add, in its place, the words ''commercial permit'' in the following places:

(a) Section 641.2, in the definitions of ''Charter vessel'' and ''Headboat'';

(b) Section 641.23(d)(2)(iii);

(c) Section 641.24(a)(1)(ii)(A);

(d) Section 641.25 introductory text; and

(e) Section 641.27(a).

§§ 641.7 and 641.10 [Amended]

10. Effective April 1, 1996, in 50 CFR part 641 remove the word ''permit'' and add, in its place, the words ''commercial permit'' in the following places:

(a) Section 641.7(gg);

(b) Section 641.7(jj)(1);

(c) Section 641.10(b)(4);

(d) Section 641.10(b)(6), first occurrence only; and

(e) Section 641.10(b)(7), second occurrence only.

[FR Doc. 95–30382 Filed 12–14–95; 8:45 am]

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Proposed Rules

Federal Register
Vol. 60, No. 241
Friday, December 15, 1995

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 108, 116, 120, 122, 131

Business Loan Programs

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's government-wide regulatory review directive, SBA has completed a page-by-page and line-by-line review of all of its existing regulations. SBA determined that it could eliminate some regulations and consolidate, clarify, and simplify the remainder. This proposed rule consolidates five current CFR parts into one Part to be known as Part 120. The surviving Part 120 covers virtually all policies and regulations, other than size standards, applicable to SBA's business (non-disaster) loan programs. Almost all provisions have been reworded, renumbered, and relocated. There are a few new or revised policies. Several sections have been deleted. However, most of the revisions merely streamline and clarify the regulations and do not represent substantive change.

DATES: Comments must be submitted on or before January 16, 1996.

ADDRESSES: Address written comments to David R. Kohler, Associate General Counsel for General Law, (120) Small Business Administration, 409 3rd Street S.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Ronald Matzner, Associate Deputy General Counsel; Office of General Counsel, at (202) 205–6882.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton directed all federal agencies to conduct a page-by-page, line-by-line review of their existing regulations to determine which could be eliminated or streamlined. The President's directive complemented SBA's ongoing reinvention effort, which had already targeted portions of the business loan programs for streamlining and simplification. From its review of its business loan programs, SBA is proposing to eliminate many pages of business loan regulations and consolidate and simplify the remainder.

The proposed rule combines Parts 108, 116, 120, 122 and 131 of 13 CFR into one new Part to be known as Part 120. The new Part 120 will regulate all of SBA's non-disaster financial assistance to small businesses under its general business loan program (''7(a) loans''), its microloan demonstration program (''Microloans''), and its development company program (''504 loans'').

Many repetitive and overlapping sections from the current regulations will be eliminated. The remaining provisions will be easy to find and easy to understand. Formerly, provisions applicable to a business loan program were often located in different Parts. Sometimes unintended differences developed between the loan programs in the interpretation or implementation of similar program policies because of minor inconsistencies in the language of the provisions in the several Parts. These inconsistencies have been eliminated.

In the proposed rule, the basic requirements that apply to all of the business loan programs are located in subpart A. These include elements currently found in portions of Parts 108, 116, and 120. Policies specific to a particular program are in the separate subpart applying to that program. Rules specific to 7(a) loans will be in subpart B and include elements currently in portions of Parts 116, 120, and 122. Regulations applying to SBA's special purpose loans currently in Part 122 and a portion of Part 116 will be in subpart C. Subparts D, E, and F will contain rules regarding lenders, program administration, and the secondary market currently found primarily in Part 120. The loan moratorium provisions presently in Part 131 will also be in subpart E. Subpart G will contain rules specific to Microloans currently in Part 122. Finally, regulations applying only to 504 loans currently located in Part 108 will be in subpart H. The following chart summarizes the proposed rule:

Subpart	Subject matter covered	Section numbers
Introduction ...	Overview of Part 120; definitions.	120.1 to 120.99.
A	Policies applicable to all business loans.	120.100 to 120.199.
B	Loanmaking policy specific to Guarantees and Direct 7(a) Loans.	120.200 to 120.299.
C	Special Purpose Loans.	120.300 to 120.399.
D	Lenders	120.400 to 120.499.
E	Loan Administration.	120.500 to 120.599.
F	Secondary Market.	120.600 to 120.699.
G	Microloan Demonstration Program.	120.700 to 120.799.
H	Development Company Loan Program (504).	120.800 to 120.899.

The most noticeable change in the proposed regulation is in the format. The rule is written in a ''user-friendly'', ''plain-language'' style. Provisions have been grouped in logical sequences. Descriptive headings make it easier to find sections. Hyphenated section numbers are no longer used. Questions and answers are sometimes used. Wherever possible, ordinary language is used instead of ''government-speak''.

SBA's intent was to write regulations that provide easy-to-comprehend notice of the general content of a policy, rather than detailed information explaining or expounding upon that policy. Much explanatory material currently in the regulations and used primarily by SBA personnel to implement SBA's programs has been eliminated from the proposed rule, but is available to the public and may be found in SBA policy guidances, Standard Operating Procedures (''SOPs''), and other SBA materials.

Most of the revisions do not represent policy changes. In many cases, the wording of the regulation has been changed to conform to actual conduct. Although SBA is not aware of any instances, SBA requests comments regarding any inadvertent substantive changes which may have been caused by rewording and format changes.

There are a few substantial policy changes in the proposed rule, however. For example, the ''alter ego'' rule has been completely revised making more Passive Companies eligible for financial assistance, and new provisions are being proposed allowing Certified Development Companies (''CDCs'') to expand into other areas not being adequately serviced by the existing CDCs in those areas. These and other substantive policies are explained in detail below in the section by section analysis.

Comments to this proposed rule are invited, including suggestions for further clarification and streamlining. Send them to the person and address noted above, within the time specified.

Each subpart is addressed separately below. Conversion tables are provided detailing all deletions, consolidations, relocations, and policy changes. Immediately below is a chart showing the location of surviving material by Parts.

Former part #	Subject matter	New 120 subpart	New section number(s)
108	Development Company Loans	H	120.800–899
116	Subpart A—Veterans	N/A	120.104
116	Subpart B—Flood Insurance	N/A	120.170
116	Subpart C—Lead-based Paint	N/A	120.173
116	Subpart D—Floodplain Management and Woodlands Protection.	N/A	120.172
116	Subpart E—Coastal Barrier Resources Act	N/A	120.175
120	Subpart—General; Subpart A—Loan-Making Policy	Dispersed in Intro., Subpart A, Subpart B.	120.1
120	Subpart B—Loan Administration	Subpart E	120.500–599
120	Subpart C—Loan Participants	Subpart D	
120	Subpart D	Subpart D	
120	Subpart E	Subpart D	
120	Subpart F	Subpart F	
120	Subpart G	Subpart F	
122	Subpart A—General Provisions	Dispersed in Introduction, Subpart A, Subpart B	
122	Subpart B—Special Purpose Loans	Subpart C	
131	Loan Moratorium	Subpart E	120.532–536

Definitions applicable to all business loans are located in § 120.10, combining separate definitions previously in Parts 108 and 120. Nearly all have been reworded. Some definitions have been added, and some have been eliminated because they were redundant or were incorporated into the text. Of particular note is the definition of ''Associate,'' which was broadened. Conversely, the definition of ''close relative'' was limited to the closest family relationship. The net effect of the changes is to pinpoint more effectively the individuals subject to the ethical requirements and conflict of interest prohibitions of the regulations. Terms which are defined in the proposed rule are capitalized in this preamble for consistency. In addition, references to SBA Regional offices and officers have been eliminated and usually, but not always, replaced with a reference to District Director because of SBA's recent restructuring.

A detailed listing of changes specific to each subpart follows.

120 Subpart A and B—General Loan Policy and Guaranteed and Direct 7(a) Loans

The following is a conversion table for Subparts A and B:

Former section number	New part 120 number for loan provisions	Action(s) (Note: all sections were renumbered and moved, or deleted)	Extent of policy change, if any; comments on action(s)
116.1–116.3	120.104	Revised; Subpart was split; provisions moved to program Parts.	Minor policy change; explanatory material and definitions will be in SOP or other policy material.
116.10–116.12	120.170	Revised; provisions condensed	No policy change; explanatory material will be in SOP or other policy material.
116.20–116.23	120.173	Revised; provisions condensed	No policy change; explanatory material will be in SOP or other policy material.
116.30–116.35	120.172	Revised; provisions condensed	No policy change; explanatory material will be in SOP or other policy material.
116.40–116.41	120.175	Revised; provisions condensed	No policy change.
116 Appendix A	N/A	Deleted	No policy change. Material no longer needed.
116 Appendix B	N/A	Deleted	No policy change. Material no longer needed.
120.1–1	120.1	Revised; some deletion; material moved	No policy change. Some explanatory material no longer valid.
120.1–2	120.4	Revised	No policy change.
120.1–3	120.180	Revised	No policy change.
120.1–4	N/A	Deleted. Unnecessary	No policy change.
120.2	120.10	Rewritten	No policy change. New definitions are added; an owner is now considered an ''Associate.''
120.2–1	120.1	Rewritten	No policy change.
120.2–2	120.10	Revised	See Policy Note above.
120.2–3	N/A	Deleted	No policy change. Definition will no longer be used.

Former section number	New part 120 number for loan provisions	Action(s) (Note: all sections were renumbered and moved, or deleted)	Extent of policy change, if any; comments on action(s)
120.2–4	120.10	Revised	Minor policy change. This definition has been dropped, but sub-definitions were modified and included elsewhere.
120.2–5	120.10	Revised	Minor policy change. Definition of Lending Institution was dropped.
120.2–6	120.10	Revised	Minor policy change. Both definitions were dropped.
120.2–7	N/A	Deleted	Minor policy change. Definition was dropped, as no longer used.
120.2–8	120.470	Rewritten	No policy change.
120.3–1	120.2	Rewritten	No policy change.
120.3–2	120.2(a)	Rewritten	No policy change.
120.3–3	120.2	Rewritten	No policy change.
120.3–4	120.101	Consolidated with 120.103–1	No policy change.
120.100	N/A	Deleted	No policy change. Section not needed.
120.101–1(a)	120.100(d)	Rewritten	No policy change.
120.101–1(b)	120.103	Rewritten	No policy change.
120.101–1(c)	120.110(j)	Revised	No policy change. Section now combined with another.
120.101–2	120.110	Revised	No policy change.
120.101–2(a)	120.110(k)	Revised	Clarifies policy regarding promotion of religion. See Note 1, below.
120.101–2(b)	120.110(g)	Revised	No policy change. explanatory material will be in SOP or other policy material.
120.101–2(c)	120.110(h)	Revised	No policy change. Needless wording was deleted.
120.101–2(d)	120.110(b)(c), 120.111	Revised; new rule included	Major policy changes. See Note 2, below.
120.101–2(d) (1) through (7).	120.111	Revised; New Rule.	Major policy changes. See Note 2, below.
120.101–2(d)	120.110(g)	Revised	No policy change.
120.101–2(f)	120.110(f)	Rewritten	No policy change.
120.101–2(g)	120.110(m)	Revised	No policy change.
120.102	120.120	Revised	No policy change.
120.102–1	120.130(f), 120.201	Revised	No policy change.
120.102–2	120.207, 120.130(d)	Revised	No policy change.
120.102–3	120.130(a)	Revised	No policy change.
120.102–4	120.104, 120.130(b)	Revised	No policy change.
120.102–4(a)	120.104	Revised	No policy change.
120.102–4(b)	120.104	Revised	No policy change.
120.102–5	120.130(c)	Revised	No policy change.
120.102–6	120.202	Revised	No policy change. Wording changed to reflect agency policy.
120.102–7	120.110(i)	Revised	Minor policy change. See Note 3 below.
120.102–8	120.130, 120.130(e)	Revised	No policy change.
120.102–9	None	Deleted	Minor policy change. Provision was not used.
120.102–10, 120.102–10 (a)–(f).	120.140, 120.110(o)	Revised; new Rule	Major policy change. See Note 4 below.
120.102–11	120.130	Revised	Minor new policy. 180-day parameter added.
120.102–12 (a)–(d)	120.110(q)	Revised	Minor policy change. See Note 5 below.
120.103–1(a), 120.103–1(b).	120.101, 120.102	Rewritten	Major policy change. See Note 6 below.
120.103–2	120.150	Revised	No policy change.
120.103–2(a)	120.150	Revised	No policy change.
120.103–2(b)	120.150(f)	Rewritten	No policy change.
120.103–2(c)	120.160(a), 120.201	Revised	Minor policy change or clarification. See Note 7 below.
120.103–2(d)	120.160(b)	Revised	No policy change.
120.103–2(e)	120.160(c), 120.170	Revised	No policy change. Though not now specifically mentioned in the regulation, life insurance may still be required as part of prudent lending.
120.103–2(f)	120.170, 120.172–73, 120.175–76.	Revised	No policy change.
120.103–2(g)	120.160(d)	Revised	Minor policy change—depository plan no longer required.
120.103–2(h)	120.200	Revised	No policy change.
120.103–3 (a)–(e)	120.193	Revised	No policy change.
120.104–1 (a)–(e)	120.220	Rewritten	No policy change.
120.104–1(f)	N/A	Deleted	Eliminated from statute.
120.104–2(a)(1)	N/A	Deleted	No policy change; policy will now be contained in SOP or other policy guidance.

Former section number	New part 120 number for loan provisions	Action(s) (Note: all sections were renumbered and moved, or deleted)	Extent of policy change, if any; comments on action(s)
120.104–2(a)(2)	N/A	Deleted	Major policy change; deleted from the Act.
120.104–2(a)(3)	N/A	Deleted	Provision eliminated by statute (and had never been implemented by SBA).
120.104–2(b)	120.221(e)(f)	Rewritten	No policy change.
120.104–2(c)	120.221(b)	Rewritten	No policy change.
120.104–2(d)	120.222	Revised	No policy change.
120.104–2(e)(1)	120.222	Revised	No policy change.
120.104–2(e)(2)	120.221(a)	Revised	No policy change.
120.104–2(e)(3)	120.223(a), 120.222(e), 120.221(d).	Revised	No policy change.
120.104–2(e)(4)	120.222(c)	Rewritten	No policy change.
120.104–2(f)	120.195	Rewritten	No policy change—Clarified that does apply to 504 loans. See Note 8.
120.105	120.176	Rewritten; consolidated	No policy change. Note that recent regulatory additions appear in 120.171 and 174. More guidance can be found in SOP.
120 Appendix A	N/A	Deleted	No policy change. Terms of the agreement are in effect. Agreement will appear in SOP or other policy material.
122.1	120.1	Combined	No policy change.
122.2	N/A	Deleted	No policy change.
122.3–1	120.180	Consolidated	No policy change.
122.3–2	N/A	Deleted	No policy change.
122.4	120.176	Consolidated	No policy change.
122.5–1	120.101	Revised; combined	No policy change.
122.5–2	120.191	Revised	No policy change.
122.5–3	120.101, 120.190(d)	Consolidated; rewritten	No policy change.
122.5–4	120.192	Rewritten	No policy change.
122.5–5	120.192 (definition.)	Revised	No policy change.
122.6–1(a)(b)	120.212	Revised	No policy change.
122.6–2	120.530	Moved; revised	No policy change.
122.6–3, Part 131	120.532–535	Moved; combined; revised	No policy change.
122.7	120.151	Rewritten	No policy change.
122.7–1	120.211(a)(b)	Revised	No policy change.
122.7–2	120.211(c)	Rewritten	Reference to District Director's authority to make exceptions will be in SOP.
122.7–3	120.151	Rewritten	No policy change.
122.7–3(a)	120.210(a)	Revised	Minor policy change; increase approval will be by AA/FA.
122.7–3(b)	120.210(b)	Revised	No policy change.
122.7–3(c)	120.210(c)	Revised	No policy change.
122.8–1	120.213(b)	Revised	No policy change.
122.8–2	120.213(b)	Revised	No policy change.
122.8–3	120.213(a)	Revised	No policy change.
122.8–4	120.214	Rewritten	No policy change.
122.8–4(a)	120.214(a)	Rewritten	No policy change.
122.8–4(b)	120.214(a)	Rewritten	No policy change.
122.8–4(c)	120.214(b)	Revised	Clarifies that movement in amount of loan must equal movement in base rate.
122.8–4(d)	120.214(c)	Moved	No policy change.
122.8–4(e)	120.214(d)	Moved	No policy change.
122.8–4(f)	120.214(e)	Moved	No policy change.
122.8–4(g)	120.214(f)	Rewritten	No policy change.
122.8–4(h)	120.214(g)	Revised	No policy change.

The following chart lists additions to Part 120:

Section number	Subject matter covered
120.110(r)	Prohibition for businesses engaged in political and lobbying activities.
120.110(o)	Prohibition for businesses engaged in pornographic or sexually-oriented (non-medical) activities. See Note 1 below.
120.171	Compliance with Child Support Obligations as a condition of an SBA loan.
120.174	Earthquake hazards notice.
120.190	Where a business applies for a loan.
120.193	Use of computer generated forms.

Note 1. SBA often receives eligibility questions from Borrowers and Lenders. In the proposed rule, SBA has attempted to delineate clearly and succinctly the businesses that are ineligible for SBA financial assistance. In particular, SBA field offices, loan applicants, Lenders, development corporations and other SBA intermediaries have requested guidance concerning the eligibility of businesses which may be engaged in religious activities. After consulting with the Department of Justice, SBA proposes to provide such guidance through these new regulations.

The present regulation states that churches and religious organizations are ineligible for SBA financial assistance. It does not specify

whether the prohibition extends to businesses principally engaged in promoting religion through their activities. Nonetheless, such businesses in the past have been found to be ineligible.

SBA's primary focus is to provide financial assistance to for-profit small businesses that can contribute to job growth and economic development in the United States. Within the limits set by the Establishment Clause of the Constitution, SBA does not disqualify otherwise eligible small businesses from receiving financial assistance merely because they offer religious books, articles, or other products for sale or because they support or encourage moral and ethical values based upon religious beliefs. At the same time, SBA does not make financial assistance available to religious entities or their affiliates for use in directly promoting or teaching religion.

The Establishment Clause of the First Amendment, which states ''Congress shall make no law respecting an establishment of religion,'' serves as a limitation on governmental activities with regard to religion. The Establishment Clause primarily proscribes ''sponsorship, financial support, and active involvement of the sovereign in religious activity.'' *Walz* v. *Tax Commission,* 397 U.S. 664, 668 (1970). ''Neither a state nor the Federal Government * * * can pass laws which aid one religion, aid all religions, or prefer one religion over another * * * No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.'' *Everson* v. *Bd. of Educ.,* 330 U.S. 1, 15–16 (1947); see also *Grand Rapids School Dist.* v. *Ball,* 473 U.S. 373, 381 (1985) (quoting this language); *McCollum* v. *Bd. of Educ.,* 333 U.S. 203, 210 (1948) (same).

Under the proposed rule, SBA would not provide financial assistance to businesses principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs. While incidental or indirect support of religious objectives might be permissible, SBA would not provide financial assistance to a newspaper, broadcasting business, day care center, or private school principally engaged in such activities.

Some of the more difficult eligibility inquiries received by SBA field offices have involved businesses which engage in activities in a secular setting which may be considered to be religious in nature. The U.S. Supreme Court has held that aid used to fund specifically religious activities in an otherwise substantially secular setting, has the primary effect of advancing religion, and therefore violates the Establishment Clause. *Hunt* v. *McNair,* 413 U.S. 734 (1973); *Bowen* v. *Kendrick,* 487 U.S. 589, 613 (1988). The facts of each situation must be carefully examined. With the above Supreme Court standard in mind, SBA proposes to include among ineligible businesses those principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether the setting is religious or secular, because, in SBA's view, financial assistance to such small businesses would violate the Establishment Clause.

SBA field office personnel and others also have sought guidance on the eligibility of small businesses which sell sexually oriented products or services, or engage in sexually oriented activities. The present regulation is silent regarding obscene, pornographic, or sexually oriented activities. A business engaging in any such activity that is illegal is ineligible under § 120.110(h) of this regulation. However, SBA receives inquiries regarding businesses engaged in activities which, while not illegal, may be considered by the average person to be obscene or pornographic.

''Obscene'' material is not protected by the First Amendment. It has been defined by the United States Supreme Court in the context of a criminal case, *Miller* v. *California,* 413 U.S. 15, 24 (1973), as follows: ''* * * whether a work which depicts or describes sexual conduct is obscene is [determined by] whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest, whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.''

Under Supreme Court precedent, ''[w]hen the government appropriates funds to establish a program, it is entitled to define the limits of that program.'' *Rust* v. *Sullivan,* 114 L.Ed.2d 233, 256 (1991). In implementing its programs, SBA must also follow the Congressional mandate set forth in Section 4(d) of the Small Business Act (15 U.S.C. 633(d)) (''the Act'') to consider the public interest in granting or denying an application for SBA financial assistance.

Having considered the legal precedent and the Congressional mandate, SBA has determined that it may exclude small businesses engaging in lawful activities of an obscene, pornographic, or prurient sexual nature. Under the proposed rule, SBA would not provide financial assistance to small businesses which present live performances of a prurient sexual nature or which derive significant gross revenue from the sale, on a regular basis, of products or services, or the presentation of depictions or displays, of a pornographic, obscene, or prurient sexual nature. Thus, an establishment featuring nude dancing, or a book, magazine or video store containing merchandise of a prurient sexual nature would not be eligible for SBA financial assistance if the obscene, pornographic, or prurient activity contributed to the generation of a significant portion of the gross revenue of the business.

SBA considers this proposed rule to be consistent with its obligation to direct its limited resources and financial assistance to small businesses in ways which will best accomplish SBA's mission, serve its constituency, and serve the public interest. Applicants' First Amendment freedoms are in no way abridged. They may still express their views, exercise their freedoms, operate their businesses, and obtain any other aid available to them.

SBA is considering the use of a percentage of gross revenue instead of ''significant'' in the final formulation of this rule and requests commenters to focus particularly on the relative merits of the two approaches and what percentage would be appropriate.

Note 2. The proposed regulation establishes a new ''Eligible Passive Company'' rule replacing the current ''alter ego'' rule. The new rule will be found at § 120.111. An ''Eligible Passive Company'' is defined as an entity which does not engage in regular and continuous business activity, which leases real or personal property to an Operating Company for use in the Operating Company's operations. SBA generally makes business loans only to small businesses engaged in regular business activities, and prohibits such assistance to entities engaged in passive investment or real estate development, or which do not engage in regular and continuous activity as an operating business. SBA calls such entities ''passive businesses.'' At the same time, SBA recognizes that valid business reasons may exist for an Operating Company not to own the real estate and fixed assets used to conduct its business. This proposed rule would allow certain passive businesses to be eligible for SBA assistance if that assistance is used only to acquire and/or improve real or personal property leased to a small business and is used in that small business' operations. The proposed rule would eliminate certain requirements and restrictions which presently limit the use of real estate holding entities in SBA's business-loan and development company programs.

For purposes of these regulations, an Operating Company is defined in section 120.100 as a small business actively currently involved in conducting business operations or about to be located on real property owned by an Eligible Passive Company, or using or about to use in its business operations, personal property owned by an Eligible Passive Company.

Many years ago, SBA agreed to assist eligible Operating Companies seeking SBA financial assistance through their affiliated ''mirror image'' passive businesses by creating an exception for such ''alter egos''. Subsequent modifications to the mirror image requirement permitted variations in ownership percentages between the operating business and the alter ego for immediate family members. Such variances led to conflicting interpretations of the policy, which have frustrated its original intent and confused both the public and SBA personnel. Such variances limited the effectiveness of the intended assistance. In addition, the variances caused inconsistencies between the 7(a) loan program and the development company loan program.

On February 22, 1994, SBA published (59 FR 8425) a proposed rule (''1994 proposal'') to eliminate the conflicting interpretations and inconsistencies and to revise the family member common ownership threshold to extend the alter ego exception to additional passive businesses. SBA received more than twenty detailed comments suggesting changes in the proposal. It also has received many other suggestions and recommendations from small business owners, development companies, lending institutions and SBA employees at regulatory partnership meetings and other outreach activities conducted by SBA. After considering these comments and suggestions, SBA has revised its thinking sufficiently to

warrant publication of this new proposed rule, included here as an integral part of SBA's overall regulatory streamlining.

In its 1994 proposal, SBA suggested reducing the common ownership threshold for any passive business and Operating Company to 20 percent. Most of the comments suggested that, as an exception to a ''mirror image'' requirement, a 20 percent threshold was insufficient to support a nexus between a passive business and an Operating Company. Some suggested that the nexus be increased to 50 percent, others to 80 percent. However, others suggested that SBA eliminate the ''mirror image'' rule altogether. After carefully considering all of the options, the goals and the objectives of SBA's loan programs, SBA proposes to eliminate the present alter ego rule, and allow such a loan whenever it essentially represents financial assistance to an Operating Company.

Many small businesses utilize separate entities to hold the real estate or leasehold improvements used in the operation of their businesses. SBA now believes that an Eligible Passive Company, without regard to its ownership interests, should be an eligible entity for SBA financial assistance if it only uses such assistance to acquire and/or improve real or personal property which it leases to an Operating Company for the conduct of its operations.

SBA's new proposed ''Eligible Passive Company'' rule recognizes that an Eligible Passive Company may be an individual, sole proprietorship, corporation, limited liability company, an irrevocable trust or any form of partnership. Under the current rule, trust ownership of any part of an Eligible Passive Company is prohibited in the SBA business loan program. The development company program permits the use of trusts as eligible owners. In this proposed rule (as in its 1994 proposal), SBA proposes to eliminate the inconsistency between the 7(a) loan program and the development company loan program. SBA believes that there is no reason to prohibit a small business concern using the SBA's business loan programs from taking advantage of the tax and planning benefits which may be inherent in the use of an irrevocable trust. Trust eligibility shall be determined by the eligibility status of the trustor (grantor/settlor), with all donors to the trust being presumed conclusively to have trustor status for eligibility purposes.

SBA welcomes comments on whether use of a revocable trust should also be permitted. While this would give Borrowers greater planning flexibility, the trustor's reserved authority to amend the trust might lead to fronts or other abuses. Under this proposed rule, an Operating Company must be an eligible small business under SBA's standards, and the proposed use of proceeds by the Eligible Passive Company would have to be an eligible use if the Operating Company were obtaining the financing directly. This ensures that the Eligible Passive Company will utilize SBA's financial assistance in the same manner as an eligible small business. As suggested by several comments on the 1994 proposal, both the Eligible Passive Company and the Operating Company must meet SBA's size standards (13 CFR Part 121).

In response to other comments on the 1994 proposal, the new rule clarifies that the lease between the Eligible Passive Company and the Operating Company must be subordinated to SBA's security interest, mortgage or trust deed lien and the Eligible Passive Company (as landlord) must pledge as collateral an assignment of rents derived from the lease. The requirement for an assignment of the lease has been eliminated, but an assignment may be required by SBA when necessary to perfect a lien under applicable law.

Several comments urged SBA not to require the Operating Company to be a co-Borrower on a loan to an Eligible Passive Company, suggesting that legitimate tax and business reasons exist in many cases for the Operating Company to be a guarantor instead of a co-Borrower. Believing this to be a credit and business decision best left to the discretion of SBA loan officers, the Borrower, and (in the development company program) the development company, SBA has provided that the Operating Company may be either a guarantor or a co-Borrower in most cases. An exception is created for loans in the 7(a) loan programs in which working capital funding is included, in which case the Operating Company must be a co-Borrower.

When an Operating Company applies for SBA loan assistance, each 20 percent or more ownership interest holder in the Operating Company must guarantee the loan. Since the Operating Company will be a co-Borrower or guarantor when an Eligible Passive Company is the Borrower, the proposed rule would extend the same requirement to ownership interests of both the Operating Company and the Eligible Passive Company.

Several comments noted that it is common for an Operating Company to need working capital when the Eligible Passive Company applies for a loan primarily to finance the acquisition of real or personal property. In the past, SBA has required the Eligible Passive Company to use the loan proceeds solely to acquire and improve property for lease to an Operating Company. Thus, two separate SBA loans would be needed—one to the Eligible Passive Company for the real property and the other to the Operating Company for working capital. The commenters suggested that SBA permit proceeds of a single loan to the Eligible Passive Company to be used for working capital in the Operating Company. This proposed rule adopts these suggestions for the 7(a) loan program, provided that the Operating Company is a co-Borrower. The loan proceeds for working capital would be allocated to the Operating Company, while those for acquisition and improvement of property for lease to the Operating Company would be allocated to the Eligible Passive Business. Under this approach, small businesses would no longer incur duplicate costs and would benefit by reduced paperwork and a streamlined loan process.

Several comments noted that a trust, established to take advantage of tax and planning benefits inherent in the trust form, may have a need to engage in other activities. They argued that SBA should not prohibit a trust which qualifies as an Eligible Passive Company from engaging in activities other than the leasing of property to the Operating Company. SBA agrees. Accordingly, under this proposed rule, a trust qualifying as an Eligible Passive Company may engage in other activities authorized under its trust documents. The Trustee will need to certify to SBA (and provide pertinent language from the trust document) that the Trustee has authority to act, and that the trust has the authority to borrow funds, pledge trust assets and lease the property to the Operating Company. The Trustee also will need to provide SBA with a list of all trustors and donors.

Note 3. To be eligible for SBA financial assistance, the products and services of a business must be available to the general public. Because the current rule refers only to recreational and amusement enterprises, it is misleading and confusing, and is not uniformly enforced by SBA field offices. The proposed rule clarifies that private clubs and businesses that limit the number of members for reasons other than capacity are ineligible for SBA financial assistance.

Note 4. The current regulations have separate conflict-of-interest sections for Lenders and development companies. SBA has re-written and consolidated the sections. The prohibitions are clear and consistent for all business loan program participants. The proposed rule expands the categories of individuals subject to the requirements and may encompass additional acts not specifically enumerated.

Note 5. The prohibition against assisting a business which previously has caused SBA to sustain a loss is currently stated explicitly only in the 7(a) regulations, although it is applied in all of SBA's business loan programs. Its inclusion in subpart A clarifies that the policy applies to all business loans. Considerable explanatory material currently in the 7(a) regulation has been removed and will be placed in an SOP or other policy guidance.

Note 6. SBA may provide financial assistance only if the applicant shows that the desired credit is needed and not otherwise available on reasonable terms. In § 120.101, SBA clarifies its present policy. The current provision, § 120.103–1 uses the language ''not otherwise available on reasonable terms'' without indicating any factors which should be considered in determining what is reasonable. Section 3(h) of the Act defines ''credit elsewhere'' as the availability of credit from non-Federal sources on reasonable terms and conditions taking into consideration the prevailing rates and terms in the community in or near where the concern transacts business, for similar purposes and periods of time. SBA believes the language in section 3(h) clarifies the credit elsewhere test and proposes to include the language in § 120.101. In addition, the current regulation provides that the certification made by a Lender in its application for an SBA guarantee is generally accepted as sufficient documentation that the desired credit is unavailable to the applicant. In the proposed § 120.101, SBA clarifies and reaffirms its existing policy that the Lender or CDC must have examined the availability of credit to the applicant, have based its

certification upon that examination, and have documentation in its file to support the certification.

In the 7(a) program, SBA often required applicant principals and owners to use personal assets before granting financial assistance, unless undue hardship would result. In the 504 program, SBA did not enforce this policy and rarely required applicants to use their own personal resources.

In this proposed rule, SBA clarifies that there is no difference between the business loan programs regarding evidence of need. SBA will consider the personal wealth and resources of the principals and owners in determining an applicant's need for SBA financial assistance in all business loan programs, and SBA may require the principals and owners of the applicant to use their personal resources before SBA will grant financial assistance.

Note 7. Current regulations require owners of 20 percent or more of a business to guarantee an SBA loan. Under SBA's current SOP, SBA may require owners of between 5 and 20 percent of a business to guarantee a loan. Since the public is not always aware of its SOP, SBA is including the latter policy in this proposed rule. Rather than set an arbitrary lower limit of 5 percent (or any other number), SBA proposes that the rule state that SBA may require holders of interests of less than 20 percent of an applicant to guarantee an SBA loan, when appropriate under prudent underwriting criteria.

Note 8. The use of SBA Form 159 (Compensation Agreement) in the 504 program has been a subject of controversy for some time. The Act requires 7(a) applicants to certify the names of and fees paid to all professionals or other representatives engaged by the applicant in connection with the SBA financial assistance. Current section 120.104–2(f) implements the statutory requirement. Title V of the Small Business Investment Act, 15 U.S.C. 695 (''Title V'') does not have a corresponding provision. Despite this, SBA, citing section 7(a)(13) of the Act, has generally extended the requirement to the development company program. Current section 108.503–6(e) requires the loan application submitted to SBA by a Certified Development Company (CDC) to disclose the amount of all fees paid, the names of the fee recipients, and a description of the services rendered. Most SBA field offices require in 504 loan authorizations that Form 159 be submitted. Many Lenders in the 7(a) program and CDCs in the 504 Program contend that Form 159 has become a burden upon the Borrowers, the Lenders and the CDCs. The 504 industry, in particular, has asked SBA to eliminate the form.

President Clinton has directed Federal agencies to reduce the paperwork burden upon the public whenever possible. However, this requirement is contained in the Act. Therefore, SBA may not eliminate the regulation with respect to the 7(a) program without a statutory change. Congress has recently held hearings regarding the disclosure of fees because of concern about the increased number of investigations of fraud by applicant representatives. As a result, SBA believes it is prudent to continue to require full disclosure of all fees. Since SBA sees no reason to differentiate among the various business loan programs regarding this issue, SBA is proposing in this Rule to maintain the requirement for all business loans until such time that Congress revisits the issue.

120 Subpart C—Special Purpose Loans

The proposed new Subpart C reorganizes and consolidates the current subpart B of Part 122, ''Special Purpose Loans'' with a portion of Part 116.

In §§ 122.51 through 122.51–6, currently known as ''Handicapped Assistance Loans,'' the word ''Disabled'' replaces the word ''Handicapped'' wherever it appears. Section 122.60 ''Rural Loans'' is deleted since this special program expired on September 30, 1995. The section currently beginning at § 122.61, ''Microloan Demonstration Project,'' has been reorganized as subpart G of Part 120 to separate it from 7(a) Special Loan Programs. There are no major substantive changes in the remaining eleven Special Loan Programs. A new revolving credit program—CapLines—replaces the GreenLine program and is outlined in § 120.395.

In the proposed rule, this subpart outlines the significant policies of each program in a streamlined format while deleting superfluous and repetitious material.

120 Subpart D—Lenders

Proposed subpart D reorganizes and consolidates current Part 120 subparts C (''Loan Participants''), D (''Preferred Lenders Program''), and E (''Certified Lenders Program''). Sections have been grouped together to aid the reader in locating information. There are only a few substantive changes in subpart D.

Proposed new § 120.430 states specifically that SBA may review a Lender's records relating to SBA guaranteed loans during normal business hours. In addition, § 120.420, which is the former § 120.301–7, contains a new provision (120.420(c)) restricting the use of SBA loans by Non-Depository Lenders.

(a) Certified Lenders Program (''CLP''). The proposed rule deletes the definitions found now at § 120.501. Some of the terms are not used in the subpart. Others apply to the entire Part and will appear in § 120.10.

The proposed rule streamlines the procedure for obtaining CLP status. Thus, current § 120.502–1 will be deleted and replaced with new § 120.441 authorizing SBA District Directors (whose decision is final) to approve and renew CLP Lenders. Section 120.441(c) clarifies that CLP status applies only in the SBA office which approved that status.

The proposed rule will eliminate current § 120.502–2, which specifies factors which SBA will consider in deciding whether a Lender should become a CLP lender. Its replacement, § 120.441(a), retains several of the current seven considerations. SBA may consider other factors as well.

Proposed § 120.442, ''Suspension or revocation of CLP status'' is new, and follows the mechanism and procedure established for PLP lenders.

(b) Preferred Lenders Program (''PLP''). The proposed PLP regulations delete superfluous information and have been reorganized into a more logical sequence. They also will reflect SBA reorganization and program changes, including the establishment of the centralized PLP processing office located in Sacramento, California.

The proposed rule deletes the definitions found now at § 120.401. Some of the terms are not used in the subpart. Others apply to the entire Part and will appear in § 120.10.

Current § 120.402–1 describes how a Lender initially may become a PLP Lender. Proposed § 120.451(a) describes new procedures following SBA's structural reorganization. The branch or district office will forward its nomination of a Lender or the Lender's request for PLP status to the loan processing center rather than to a regional office. The district office's recommendation and the loan processing center's recommendation are forwarded to the AA/FA who makes the final determination. This section also provides for expansion and recertification of PLP status by the AA/FA after a review of the PLP Lender by SBA.

The section clarifies that if a PLP Lender is not already a CLP Lender in a territory into which it seeks to expand its PLP status, it will automatically obtain CLP status in the territory when it is granted an extension of its PLP status into that territory without approval from the District Office.

Proposed § 120.451(b)(current § 120.402–2) describes the factors SBA will consider in evaluating PLP nominations. SBA has eliminated the requirement that the Lender be a Certified Lender before being considered as a PLP Lender.

Proposed § 120.451(c) is a new provision providing that the AA/FA will designate the ''area'' in which a PLP Lender can make PLP loans. SBA believes that centralizing this function in the AA/FA will result in a uniform policy and practice.

The proposed rule consolidates the current § 120.403–1 (statutory ceiling), § 120.403–5 (interest rates), and § 120.403–6(b)(fees) into §§ 120.151, 120.213, 120.214, 120.221 and 120.222 respectively. The proposed rule deletes the current § 120.403–3 (credit allocation) because it is no longer used.

The proposed rule deletes the current § 120.403–6(a), which limits the fees a PLP lender can charge if it sells the guaranteed portion of a loan within six months of disbursement, because SBA feels there is no need to retain a cap on this fee. It consolidates the current § 120.403–7(c) into § 120.430.

The current § 120.403–7 has been rewritten as the new § 120.452(a) specifying the requirements of PLP loan processing. The section specifying the percentage of a PLP loan that SBA will guarantee has been moved from the current § 120.403–2 to § 120.452(a)(3). In proposed § 120.452(b), SBA describes the new procedures for approving a PLP loan by submitting documents to the loan processing center, which issues an SBA loan number.

The proposed rule consolidates the current §§ 120.404–1 through 120.405–1 concerning servicing and liquidation into proposed § 120.453, and deletes current §§ 120.405–2 through 120.405–4 because they are redundant or adequately described in SBA's SOP.

In proposed § 120.451(f), SBA has added a new provision to allow a PLP Lender to submit a request to expand its territory to the SBA loan processing center.

(c) Small Business Lending Companies (''SBLC''). The proposed rule revises the SBLC regulations for clarity and to eliminate details of the program better suited to an SOP. The sections have been renumbered, reorganized in a more logical structure, and presented in a question and answer format.

Finally, a provision on SBA's authority to suspend or revoke an SBLC's license is proposed at § 120.475.

120 Subpart E—Loan Administration

New subpart E proposes general loan administration rules. Basically, these proposed rules reflect existing SBA policies. Any SBA field office can provide more detailed guidance concerning any aspect of these proposed rules.

Proposed §§ 120.510 and 120.511 describe the servicing responsibilities of the parties making loans. SBA services direct loans that it makes without the participation of a Lender, while Lenders service loans they make with the SBA guarantee. After SBA honors its guarantee, the Lender generally continues to service the loan. Proposed § 120.512 describes this arrangement.

Proposed § 120.513 lists the servicing actions that require the concurrence of the Lender and the SBA because of their importance to the effective and efficient operation of SBA's loan program. The list includes the provisions contained in the participation agreement which a Lender executes with SBA to allow it to make 7(a) guaranteed loans, such as the alteration of terms and conditions of any loan instrument, the release of collateral with a value over 20 percent of the original amount of the loan, the acceleration of the maturity of a note, and the initiation of litigation.

SBA has the authority to purchase the guaranteed portion of a loan at any time, and proposed § 120.520 provides that a Lender may ask SBA to purchase the guaranteed portion when the Borrower has been continuously in default on its installment payments to the Lender for more than 60 days. If a Borrower cures a default (see § 120.523) before SBA purchases, the Lender's right to request purchase lapses. If SBA honors its guarantee, it does not waive any right it may have against the Lender because of the Lender's negligence, misconduct, or violation of the regulations, the guarantee agreement between the lender and SBA, or any of the loan instruments. SBA may sue to recover the amounts paid and may assert as a basis for recovery any of the grounds set forth in § 120.524.

A Borrower's obligation to pay principal and interest continues after SBA honors its guarantee. Proposed § 120.521 prescribes that the interest rate for which the Borrower is liable after the purchase continues to be the rate stated in the note if it is a fixed rate note. If a loan carries a fluctuating interest rate, the Borrower is obliged for the rate in effect at the time of the earliest uncured default (where there has been a default), or the rate in effect at the time when SBA purchases (where there has been no default). This means that no further fluctuations of interest can occur after SBA honors its guarantee.

Proposed § 120.522 provides that the interest rate for which SBA is liable when it purchases the guaranteed portion is the rate in the note if it is a fixed rate loan, or the rate in effect on the date of the earliest uncured default (if a default has occurred) or when SBA purchases (if there has been no default). The section provides that SBA pays a Lender no more than 120 days interest from the date of a Borrower's uncured default, plus any deferment period or time it takes for SBA to process a request to purchase. This cut-off period encourages a Lender to make timely demand on SBA to purchase. Because extenuating circumstances may occur, the proposed section authorizes SBA to extend the 120 day time period for good cause.

Proposed § 120.523 defines ''earliest uncured default'' as the date on which a Borrower fails to pay a regular installment payment which remains unpaid for 60 days. If a Borrower makes a payment before a Lender requests SBA to honor its guarantee, the earliest uncured default date advances to the next unpaid installment date. This means that if a Borrower cures early defaults, the earliest uncured default date continues to move forward.

SBA does not have to honor its guarantee, under proposed § 120.524, if a Lender, amoungst other things, fails to make, close, service, or liquidate an SBA guaranteed loan in a prudent fashion. The regulation contemplates that a Lender will comply with all the provisions of the regulations, the loan guarantee agreement it executed with SBA, the loan authorization (which is the document SBA issues to state that it is providing its guarantee for a specific loan request), and other loan documents. A Lender's failure to disclose material facts, a Lender's making material misrepresentations to SBA, or the Lender's failure to use SBA provided forms or exact computerized facsimile copies also justifies denial of liability under the guarantee. Other Lender actions which would support SBA's denial of liability on its guarantee include Lender's failure to pay the guarantee fee, Lender's late demand on SBA to purchase, or if the Borrower has paid the loan in full.

In order to assure the successful establishment and operation of a Borrower, proposed § 120.530 authorizes SBA to defer a Borrower's initial payments for a stated period of time. Under proposed § 120.531, SBA could extend the maturity of a loan for up to ten years beyond its stated maturity if the extension would aid in the orderly liquidation of the loan. Proposed § 120.532 defines ''Moratorium'' to be the period of time during which SBA assumes a Borrower's obligation to make installment payments on a guaranteed loan.

Under proposed § 120.533, SBA could grant a Moratorium if the business would become or remain insolvent without it; if the business would become or remain viable with a Moratorium; if a deferment is not available; if all the parties agree that SBA could stop making payments at any time; if the Borrower executes a demand

note to repay SBA's Moratorium payments; and if SBA obtains security which it deems necessary. These conditions supporting a Moratorium ensure that the parties know that their obligations continue and that SBA expects to be reimbursed for its advances under this procedure.

Proposed § 120.534 allows SBA to continue a Moratorium for six months. SBA may extend a Moratorium for up to five years if a Borrower could demonstrate its eventual ability to repay the original note (and the demand note required for the Moratorium). Proposed § 120.535 lists the repayment terms for a Moratorium. Under this section, the interest rate on the demand note is the same as for the guaranteed loan; SBA will apply repayments first to accrued interest and then to principal; and SBA may demand payment in full under the demand note or accept a repayment schedule.

Proposed § 120.540 establishes SBA's policy concerning the liquidation of collateral. Ordinarily, SBA does not liquidate collateral if there is any reasonable prospect that the Borrower or guarantor (other than SBA) may repay the loan within a reasonable period of time. Without the Borrower's consent, SBA has the authority to sell a direct loan, convert a direct loan to a guaranteed or immediate participation loan, or convert an immediate participation loan to a guaranteed loan or a loan owned solely by the Lender. Importantly, this authority enables SBA to take appropriate steps to resolve issues and problems concerning a loan. The proposed section also provides that SBA will generally use competitive bids or a negotiated sale to dispose of collateral. Under the proposed section, SBA and the Lender would share all loan payments and recoveries, all reasonable expenses, and any security or guarantee which the Lender or SBA may receive in connection with a loan. The proposed section provides that guarantors of financial assistance have no rights of contribution against SBA on a direct or guaranteed loan. The proposed section makes clear that SBA is not a co-guarantor with any other guarantor, and that SBA's guarantee is unique, distinctive, and of a totally different character than the guarantees offered by other parties.

Under applicable federal law, homestead protection for a farmer-Borrower covers a residence and a reasonable amount of adjoining real property (''the collateral'') that are still occupied by the farmer-Borrower after being acquired by SBA as a result of foreclosure, a voluntary conveyance, or conveyance to the government by a trustee in bankruptcy. The homestead protection provisions in the proposed rules cover SBA direct and guaranteed loans, as well as SBA disaster loans. Proposed § 120.550 specifies that a farmer-Borrower who defaults on an SBA loan would be allowed to lease the collateral from SBA. Under proposed § 120.551, SBA must notify the farmer-Borrower of the homestead protection rights within 30 days after SBA acquires the property. Under the proposed rule, the farmer-Borrower has to apply to the local SBA office for homestead protection within 90 days after SBA acquires the property, provide evidence that the farm produces farm income reasonable for the area and economic conditions, show that at least 60 percent of the farmer's gross annual income came from farm or ranch operations in at least 2 out of the last 6 years, that the farmer-Borrower has resided on the property during the preceding 6 years, and that the farmer is personally liable for the debt. This last point means that the SBA loan could have been made to any individual or entity, so long as the farmer-Borrower was personally liable for the debt.

Under proposed § 120.552, the farmer, under a lease with SBA, has to occupy the residence and pay a reasonable rent to SBA. The lease can be for a period of up to 5 years, and can be renewed for up to another 5 years. During the lease, or at its end, the lessee-farmer has the right of first refusal to reacquire the homestead property under terms and conditions no less favorable than those offered to any other purchaser. If the sale of the homestead property is an installment sale, the purchase agreement has to require a down payment of no less than 20 percent of the purchase price. The option price to the lessee-farmer must be the appraised fair market value determined by an independent appraisal. SBA cannot demand a payment for the homestead property that exceeds the appraised value.

Under proposed § 120.553, a farmer-Borrower can appeal denial of a homestead protection application to the AA/FA. Until a final decision is made, the farmer would be allowed to remain on the property. If a conflict exists between state law and the SBA homestead provisions, state law prevails.

120 Subpart F—Secondary Market

SBA has consolidated subparts F, G, and H of Part 120 into one new Subpart F, governing SBA's secondary market for SBA guaranteed portions of loans. Subpart F covers central registration requirements, the pooling and sale of SBA guaranteed portions, and the sale of individual SBA guaranteed portions that do not comprise part of a Pool. Provisions currently found in separate subparts have been consolidated for ease of understanding. SBA has renumbered and reordered the resulting provisions, but there are no substantive or policy changes.

The following is a conversion chart explaining where the current sections of subparts F, G, and H of 120 will be placed:

New section	Old section
120.600	120.601, 120.700, 120.800.
120.601	120.602, 120.702, 120. 800, 120.802.
120.610	120.706 and 120.803.
120.611	120.707.
120.612	120.710 and 120.807.
120.613	120.301–2.
120.620	120.711 and 120.701.
120.621	120.801.
120.630	120.703.
120.631	120.704.
120.640	120.709 and 120.806.
120.641	120.713 and 120.809.
120.642	120.708.
120.643	120.805.
120.644	120.804.
120.645	120.605,120.605–1.
120.650	120.603, 120.604, 120.604–1, and 120.604–2.
120.651	120.605–3.
120.652	120.712 and 120.808.
120.660	120.605–2, 120.705, and 120.810.

Proposed § 120.600 describes the secondary market. Section 120.601 contains definitions used in subpart F. Proposed § 120.610 provides that each Certificate representing either the entire individual guaranteed portion of an individual 7(a) guaranteed loan or an undivided interest in a Pool consisting of the SBA guaranteed portions of a number of 7(a) guaranteed loans (''Certificate'') must be in registered form only. This means that there are no bearer Certificates. The section also specifies payment terms for Certificates.

Proposed § 120.611 describes the Pools which back Pool Certificates, including Pool characteristics and Pool Certificate interest rates. In § 120.612, SBA specifies conditions which must be met for an SBA guaranteed portion of a loan to be eligible to back a Certificate. Among other things, a loan must be current.

Proposed § 120.613 describes a secondary participation guarantee agreement (SPGA). Before an SPGA may be executed, the Lender must disburse the full amount of the loan, pay SBA's guarantee fee, and give SBA copies of the SPGA and note.

Proposed § 120.620 describes the extent of SBA's guarantee of a Pool Certificate. SBA guarantees the timely payment, whether or not collected, of principal and interest, and any prepayment of principal on the loans. SBA's guarantee to a Registered Holder in a Pool of SBA guaranteed portions of loans is backed by the full faith and credit of the United States.

Proposed § 120.621 describes the extent of SBA's guarantee of an individual guaranteed portion. SBA guarantees to purchase from the Registered Holder the guaranteed portion equal to the unpaid principal and interest, less deductions for the servicing fees of the Lender and the fiscal and transfer agent (''FTA''). SBA does not guarantee timely payment on individual guaranteed portions. SBA's guarantee to a Registered Holder is unconditional and is backed by the full faith and credit of the United States. SBA's guarantee is triggered when the Borrower defaults on installments of principal or interest, the Lender fails to send to the FTA any payments it received from the Borrower, or the FTA fails to send to the Registered Holder any payments it received from the Lender.

Proposed § 120.630 specifies the qualifications that an entity must possess to be a Pool Assembler. Among other things, the entity must be subject to regulation by an appropriate agency, have the financial capability to assemble acceptable guaranteed portions, and be in good standing with SBA. In proposed § 120.631, SBA specifies reasons for suspending a Pool Assembler from the secondary market.

Proposed § 120.640 describes the administration of the Pools and individual guaranteed portions. The FTA maintains a registry of Certificate owners. Each Pool is self-liquidating, which means that there is no substitution of guaranteed portions of loans that are paid off by the borrower or SBA. If SBA pays a claim under a guarantee with respect to a Certificate, it is subrogated to the rights satisfied by the payment. This means that SBA can take any and all steps to be reimbursed for payments it makes. Absent an express statutory change, no federal, state or local law can preclude or limit SBA's exercise of its ownership rights in the portions of loans constituting the Pool against which Certificates are issued.

Proposed § 120.641 requires the Pool Assembler, Registered Holder of a Certificate representing an individual guaranteed portion, or any subsequent seller to disclose to the purchaser information on the Certificate's terms, conditions, and yield. Section 120.642 specifies the documents that a Pool Assembler must deliver to the FTA before the FTA can issue a Certificate, such as a Pool application form and documents which evidence the guaranteed portions which comprise the Pool. Section 120.643 specifies the documents that a seller must provide the FTA before the FTA can issue the initial Certificate for an individual SBA guaranteed portion, including documentation of ownership and a copy of the note that represents the guaranteed loan.

Proposed § 120.644 describes certain conditions applying to the sale of individual guaranteed portions. Each Certificate which represents the guaranteed portion of a single loan must be for the entire amount of the guaranteed portion. A Lender (or its Associate) cannot purchase the guaranteed portion of a loan which it has made.

In § 120.645, SBA describes how to transfer a Certificate and what information a seller must supply to the FTA. Transfers must comply with Article 8 of the Uniform Commercial Code of New York State.

Under § 120.650 the FTA registers, issues, transfers title to, and redeems Certificates. Proposed § 120.651 tells a Registered Holder what information it must give to the FTA to replace a Certificate because of loss, theft, destruction, mutilation or defacement. Section 120.652 authorizes the FTA to collect fees approved by SBA.

Proposed § 120.660 specifies the reasons for SBA to suspend or revoke the privilege of a lender, broker, dealer, or Registered Holder to participate in the secondary market.

Subpart G—Microloan Demonstration Program

This proposed subpart revises, amends, and reorganizes the rules covering the microloan demonstration program (''microloans'') currently located in Part 122. Substantive changes include: (1) § 120.708(c) provides a clearer understanding of how SBA determines the interest rate charged to an intermediary; (2) § 120.708(e) makes it clear that SBA loans to intermediaries are non-recourse unless an intermediary causes a loss to SBA by fraud or negligence; and (3) § 120.710 requires an intermediary to maintain accurate and current books and records, and to report periodically to SBA the status of its microloan portfolio.

The following conversion chart shows where to find the current Part 122 microloan sections:

Existing section	Action	New section
§ 122.61 (a) and (b)	Revised	§ 120.700 (a)–(c)
§ 122.61–2 (a)–(c)	Retained	§ 120.701 (a)–(c)
§ 122.61–2(d)	Revised	§ 120.701(d)
§ 122.61–2 (e)–(g)	Retained	§ 120.701 (e)–(g)
	New	§ 120.701(h)
§ 122.61–3(a)	Revised	§ 120.700(d)
§ 122.61–3(b)	Revised	§ 120.703
§ 122.61–3(c)	Revised	§ 120.703(c)
§ 122.61–4 (a) and (b)	Revised	§ 120.705
§ 122.61–4(c)	Deleted	
§ 122.61–5	Revised	§ 120.704
§ 122.61–6 (a)–(c)	Revised	§ 120.707
§ 122.61–6(d)	Revised	§ 120.707
§ 122.61–6(e)	Revised	§ 120.707
§ 122.61–6(f)	Deleted	
§ 122.61–7	Revised	§ 120.708
§ 122.61–8 (a)–(c)	Revised	§ 120.710
§ 122.61–8(d)	Deleted	§ 120.710
§ 122.61–9 (a) and (b)	Revised	§ 120.710
§ 122.61–10	Retained	§ 120.712
§ 122.61–11(a)	Revised	§ 120.712
§ 122.61–11(b)	Revised	§ 120.702

Existing section	Action	New section
§ 122.61–11(c)	Retained	§ 120.712
§ 122.61–12	Revised	§ 120.711

Subpart H—Development Company (504) Loan Program

This proposed rule makes current Part 108 a subpart of Part 120. The following conversion chart details the restructuring, subsection-by-subsection. Those sections of Part 108 applicable to all business loans have been consolidated with the corresponding 7(a) provisions and placed in subpart A (''Policies Applying to All Business Loans''). Sections of Part 108 that apply only to the Development Company Loan Program (''504 loans'') will be in this subpart H. Finally, some sections of Part 108 have been deleted as delineated in the chart.

Part I—Section-by-Section Analysis of Part 108

Former § 108 subpart	Proposed action on subpart	Comments on action
§ 108.1(a)	Condensed and moved to § 120.800	No policy change.
§ 108.1(b)	Condensed and moved to § 120.800	No policy change.
§ 108.1(c)	Rewritten and moved to § 120.860–§ 120.862	No policy change.
§ 108.1(d)	Incorporated into § 120.862	No policy change.
§ 108.1(e)	Eliminated as redundant; incorporated into § 120.176	No policy change; eliminated because policy covered by other parts.
§ 108.2	Definitions applying to all business loans are in § 120.10. Those applying solely to 504 loans are in § 120.801. Some terms applying only to a certain subsection are defined in the subsection.	See comments below on specific definitions.
§ 108.3(a)	Rewritten and placed into § 120.881(a). Definition of Substantial Increase in Unemployment is found in § 120.801.	No policy change.
§ 108.3(b)	Eliminated	Deleted because 501 and 502 programs have been eliminated.
§ 108.3(c)	Eliminated	Deleted because 501 and 502 programs have been eliminated.
§ 108.3(d)	Eliminated	Deleted because 501 and 502 programs have been eliminated.
§ 108.4(a)	Eliminated	No change of policy; rule eliminated because inherent in standard business practice.
§ 108.4(b)	Eliminated, but covered in § 120.826	No change in policy; will be covered in SBA's Standard Operating Procedure (SOP) or other policy guidance.
§ 108.4(c)	Eliminated, but covered in § 120.826	No change in policy; will be covered in SBA's SOP or other policy guidance.
§ 108.4(d)	Rewritten, clarified, and broadened. Most provisions consolidated with corresponding sections of current Part 120 into proposed § 120.140. See Note 4, subparts A and B. Those applying only to 504 loans are in § 120.855.	Minor policy change: SBA may waive prohibition on member of CDC Board of Directors being on another CDC's Board.
§ 108.4(e)	Consolidated with § 108.4(d) and placed in § 120.40. Specific examples of conflicts of interest will be found in SOP. Prohibition against debt refinancing is in § 120.884.	No policy change.
§ 108.4(f)	Eliminated	Consolidated into § 120.176.
§ 108.5(a)	Covered in § 120.826; specific explanations and details in SOP	No policy changes.
§ 108.5(b)	Covered in § 120.826; specific explanations and details in SOP	Miniaturized reproductions of CDC records no longer referenced. Other technologies now available. Specific details will be in SOP.
§ 108.5(c)	Condensed into § 120.830(c)	No policy change.
§ 108.5(d)	Condensed into § 120.830(d) and (e)	Policy change -means of delivery will be detailed in SOP.
§ 108.5(e)	Eliminated	Report considered unnecessary under Presidential directive to reduce paperwork.
§ 108.5(f)	Eliminated	No policy change. Not required as regulation.
§ 108.6	Eliminated	Reserved sections were removed.
§ 108.7(a)	Consolidated in § 120.140	No policy change.
§ 108.7(b)	Eliminated. Provision covered in note and other closing documents	No policy change.
§ 108.8(a)	Credit elsewhere test consolidated and placed in § 120.101; evidence of need and use of personal resources by principals placed in § 120.102.	Major change of policy emphasis. See Note 6, subparts A and B.
§ 108.8(b)	Consolidated into § 120.150 and § 120.160	No policy change.
§ 108.8(c)	Sound business purpose is addressed in § 120.120 and § 120.150. Size requirements is addressed in § 120.100(c) and § 120.880(b).	No policy change.

Former § 108 subpart	Proposed action on subpart	Comments on action
§ 108.8(d)	Replaced by § 120.111	Major policy change. See Note 2, subparts A and B.
§ 108.8(e)	Condensed and placed in § 120.870	No policy change.
§ 108.8(f)	Included in § 120.881. Financial and investment businesses addressed in § 120.110.	Clarifies policy. Ineligibility of project because relocation will cause unemployment may be rebutted if the relocation is crucial to the continued existence, economic wellbeing or competitiveness of the applicant, and the benefit to new community outweighs injury to old.
§ 108.8(g)	This subject is consolidated into § 120.110 and § 120.130	No policy change.
§ 108.9	Rewritten and placed in § 120.923(c)	No policy change.
§ 108.10	Eliminated. Not necessary to include in regulation	No policy change.
§ 108.501	Eliminated	Deleted because program eliminated, but SBA still regulates existing loans under this program. See § 120.180.
§ 108.501–1	Eliminated	Deleted because program eliminated, but SBA still regulates existing loans under this program. See § 120.180.
§ 108.502	Eliminated	Deleted because program eliminated, but SBA still regulates existing loans under this program. See § 120.180.
§ 108.502–1	Eliminated	Deleted because program eliminated, but SBA still regulates existing loans under this program. See § 120.180.
§ 108.503(a)	Eliminated	No policy change; covered in § 120.1.
§ 108.503(b)	Rewritten and incorporated into § 120.2, § 120.860, § 120.861, and § 120.862.	No policy change.
§ 108.503(c)	Rewritten and placed in § 120.829	Minor policy change. $45,000 is substituted for 25% increase, which was $43,750. Specific instructions and details in SOP and program guidance.
§ 108.503(d)	Condensed and placed in § 120.829(b) and (c)	No policy change; specific instructions and details in SOP and policy guidance.
§ 108.503–1(a)	Description of the program incorporated into § 120.2(c) and § 120.801. Eligible projects are in § 120.120, and applications for certification are in § 120.810.	No policy change
§ 108.503–1(b)	Rewritten and placed in § 120.820 through § 120.826, and § 120.855(a)	No policy change; incidental benefit to CDC Associate clarified to allow relationship in the regular course of business.
§ 108.503–1(c)	Rewritten and placed in § 120.821. See definition of Area of Operations in § 120.802. Extending a CDC's Area of Operations is in § 120.835 and § 120.836. Expiration of existing, temporary Expansions is in § 120.837. Case-by-case extensions are in § 120.838.	Important policy changes—see comments below.
§ 108.503–1(d)	Consolidated into § 120.822. Member or Board representation in another CDC is in § 120.855(b).	Policy change. See Note under current § 108.4(d) above. Specific details and instructions will be in SOP
§ 108.503–1(e)	Rewritten and placed in § 120.826 and § 120.827. SBIC limitation addressed in § 120.820.	No policy change; Specifics addressed in SOP.
§ 108.503–1(f)	Incorporated in § 120.827	No policy change
§ 108.503–1(g)	Rewritten and placed in § 120.855(b)	Policy change. See Note under current § 108.4(d) above.
§ 108.503–2(a)	Rewritten and placed in § 120.810	Small substantive change. Regional offices removed from process because of SBA reorganization. More information in SOP.
§ 108.503–2(b)	Rewritten and placed in § 120.811	Minor procedural changes. 10 day period to submit notice to SBA eliminated; officer and director addresses no longer required in notice.
§ 108.503–2(c)	Rewritten and placed in § 120.981	No policy changes.
§ 108.503–2(d)	Rewritten and placed in § 120.812	No policy change.
§ 108.503–2(e)	Rewritten and placed in § 120.980	No policy change.

Former § 108 subpart	Proposed action on subpart	Comments on action
§ 108.503–3(a)	Rewritten and placed in § 120.827	No policy change.
§ 108.503–3(b)	Covered by § 120.827(a)	No policy change. Will be expounded upon in SOP.
§ 108.503–3(c)	Rewritten and placed in § 120.828	Policy change. The number of loan approvals required to satisfy the minimum level of activity will now be specified in annual program announcement. See major policy change note (a) below.
§ 108.503–3(d)	Covered by § 120.826	No policy change. Specifics in SOP.
§ 108.503–3(e)	Eliminated.	Deleted reserved section.
§ 108.503–3(f)	Rewritten and placed in § 120.830(a) and (b)	No policy change. SBA streamlining paperwork requirements under Presidential directive. Specifics in SOP.
§ 108.503–3(g)	Rewritten and placed in § 120.140(c).	No policy change.
§ 108.503–3(h)	Rewritten and placed in § 120.983	No policy change.
§ 108.503–4(a)	Rewritten and placed in § 120.120, § 120.110, § 120.150 and § 120.193. See § 120.871 and § 120.872 for portions of new construction or existing building that may be leased.	No policy changes.
§ 108.503–4(b)	Rewritten and placed in § 120.130 and § 120.881	Policy change. Airplanes in Alaska and Hawaii no longer eligible. Reference to assets limited in potential use or marketability deleted. This is part of the credit decision. The rule clarifies the eligibility status of heavy construction equipment. See comment (d) below.
§ 108.503–4(c)	Rewritten and placed in § 120.882(a)(2) and § 120.884(a) and (c). Statutory ceiling discussed in § 120.931; SBIC participation in § 120.103 and § 120.913; and administrative ceiling in § 120.932..	Policy change. Any expenditure made toward a project in anticipation of SBA assistance within 6 months of receipt by SBA of an application is eligible. No notice is required. See comment (b) below.
§ 108.503–5(a)	Rewritten and placed in § 120.120 and § 120.882	No policy change.
§ 108.503–5(b)	Rewritten and placed in § 120.883	No policy change.
§ 108.503–5(c)	Rewritten and placed in § 120.130 and § 120.884	No policy change.
§ 108.503–5(d)	Discussed in § 120.882(a)(2). Land contributions in § 120.911	See comment under current § 108.503–4(c) above and policy comment discussion (b) below. Specific instructions and explanations will be in SOP.
§ 108.503–6(a)	Rewritten and placed in § 120.883(c), § 120.961(a), and § 120.971(a)(1)	No policy change. Omits reference to $2,500 in discussion of legal fees. See note (c). Specifics in SOP.
§ 108.503–6(b)	Rewritten and placed in § 120.936	No policy change.
§ 108.503–6(c)	Rewritten and placed in § 120.961(b)	No policy change.
§ 108.503–6(d)	Rewritten and placed in § 120.971(a)(3)	No policy change.
§ 108.503–6(e)	Eliminated	Policy change. See Note 8, subparts A and B.
§ 108.503–7(a)	Rewritten. Certification of project completion placed in § 120.891. Certifications of no adverse change are in § 120.892..	No policy change. Specifics in SOP.
§ 108.503–7(b)	Rewritten and placed in § 120.890	No policy change.
§ 108.503–7(c)	Rewritten and placed in § 120.962	No policy change.
§ 108.503–8(a)	Rewritten and placed in § 120.900	No policy change, but (3) is now called ''Borrower contribution'' instead of ''the 503 Company injection''.
§ 108.503–8(b)	Rewritten and placed in § 120.920 through § 120.925. Newly published (1/20/95) ''other real estate owned'' provision placed in § 120.923(a).	No policy change, but § 120.923(b) clarifies that some payments made by lienholder are allowed to maintain and protect the lien position.
§ 108.503–9	Loan conditions are detailed in § 120.930 through § 120.941. Description of program is in § 120.3 and § 120.801.	No policy change.
§ 108.503–10	Rewritten and placed in § 120.910 through § 120.913	No policy change. Some specifics left for SOP.
§ 108.503–11	Eliminated. Consolidated with current § 108.504(e) into § 120.954	No policy change.
§ 108.503–12	Rewritten and placed in § 120.960	No policy change. Specifics in SOP.
§ 108.503–13(a) and (b)	Rewritten and placed in § 120.970. Quarterly reports discussed in § 120.830(f).	No policy change. Specifics moved to SOP.
§ 108.503–13(c)	Placed in 120.970. Incorporates § 120.513	No policy changes. Specifics in SOP.
§ 108.503–13(d)	Rewritten and placed in § 120.971(a)(1)	No policy change.
§ 108.503–13(e)	Rewritten and placed in § 120.982	No policy change.
§ 108.503–13(f)	Rewritten and placed in § 120.983	No policy change.

Former § 108 subpart	Proposed action on subpart	Comments on action
§ 108.503–13(g)	Rewritten and placed in § 120.938	No policy change.
§ 108.503–13(h)	Consolidated into § 120.530	No policy change. Specific information and explanatory material will be in SOP.
§ 108.503–14	Rewritten and placed in § 120.970	No policy change. Specific information and explanatory material will be in SOP.
§ 108.503–15(a) and (b)	Rewritten and placed in § 120.972	No policy change—specifics in SOP.
§ 108.503–15(c) and (d)	Eliminated	Deleted all reserve sections.
§ 108.503–15(e)	Rewritten and placed in § 120.984	No policy change.
§ 108.504 (a), (b) and (c)	Consolidated into § 120.801	No policy change.
§ 108.504(d)	Placed in § 120.934	No policy change.
§ 108.504(e)	Rewritten and placed in § 120.954	No policy change.
§ 108.504(f)	Rewritten and placed in § 120.941	No policy change.
§ 108.504(g)	Eliminated. More suitable for inclusion in SOP	No policy change.
§ 108.504(h)	Rewritten and placed in § 120.941	
§ 108.504(i)	Consolidated into § 120.962	No policy change.
§ 108.504(j)	Rewritten and placed in § 120.939	No policy change.
§ 108.504(k)	Placed into § 120.941	No policy change.
§ 108.504(l)	Eliminated	No policy change. Debentures are sold through Pools.
§ 108.504–1	Condensed and placed in § 120.194	Computer generated forms now may be used for all business loans, not just 504 loans.
§ 108.505(a)	Consolidated into § 120.1	No policy change.
§ 108.505(b)	Consolidated into § 120.2 and § 129.801	No policy change.
§ 108.505(c)	SBA guarantee discussed in § 120.801; timely payment on Certificate is in § 120.942; effect of other laws is in § 120.991.	No policy change.
§ 108.505(d)	Condensed and placed in 120.941	No policy change.
§ 108.505(e)	Condensed and placed in § 120.942	No policy change.
§ 108.505(f)	Placed in § 120.950, § 120.951 (selling agent), § 120.952 (fiscal agent), § 120.953 (trustee), and § 120.954 (central servicing agent). Bond/Insurance requirement moved to § 120.956(a).	No policy change, but reference to ''Transfer Agent'' has been deleted. ''Trustee'' has been used since 1986.
§ 108.505(g)	Eliminated. Regulations not necessary	No policy change, but ''Pooler'' is now referred to as ''Underwriter'' and specific conditions and duties will be in SOP.
§ 108.505(h)	Consolidated and placed in § 120.955	No policy change.
§ 108.505(i)	Consolidated and placed in § 120.971(c)	No policy change.
§ 108.505(j)	Included in § 120.942(b)	No policy change.
§ 108.505(k)	Condensed into § 120.940	No policy change.
§ 108.505(l)	Condensed into § 120.956	No policy change.
§ 108.506	Condensed and consolidated into § 120.140(i)	No policy change.
§ 108.507	Rewritten and placed in § 120.850	No policy change.
§ 108.507–1	Merged into § 120.850	No policy change.
§ 108.507–2	Consolidated into § 120.851	Minor policy change. ADCs may be for-profit, as well as non-profit status. SBA's purpose is to encourage more organizations to aid small businesses.
§ 108.507–3	Condensed into § 120.851	No policy change. Specifics will be in SOP.
§ 108.507–4	Consolidated into § 120.850(a)	No policy change.
§ 108.507–5	Reviews and audits consolidated into § 120.972. Suspension and revocation discussed in § 120.852.	No policy change.
§ 108.508–1	This new program, published 4/26/95, was condensed and placed at § 120.840.	No policy change.
§ 108.509	This new program, published 4/26/95, was condensed and placed at § 120.845.	No policy change.
New	120.831	Minor policy change. CDCs would disclose to SBA & Borrower any compensation or remuneration received from a Lender or other party involved in a 504 loan to monitor any inducements.

Part II—Major Policy Changes

(a) Area of Operations. During the policy review accompanying the regulatory rewriting, SBA focused much of its attention on the question of what constitutes adequate service in an Area of Operation. Throughout the history of the 504 program there has been a great divergence among CDCs in the number of loan approvals each year. While some CDCs have exhibited continued growth measured by their loan approvals and

ability to package, process and service loans, other CDCs have lagged behind. There are many complicated reasons for this, but the net result has been a patchwork of 504 service (measured by loan approvals) across the country, with many small businesses in some areas receiving 504 assistance while in other areas few, if any, small businesses have received such assistance.

SBA attempted to address this issue by permitting CDCs to expand temporarily into adjacent areas, and then, in l993, by designating a minimum number of loan approvals per year which a CDC must average over the previous two fiscal year periods to retain certification as a CDC. The current number of required loan approvals is two. SBA also established the status of an Associate Development Company (''ADC''). Those CDCs unable or unwilling to meet the minimum number of loan approvals may become ADCs, thereby continuing to participate in the program goals of economic and community development without having to make loans. A number of CDCs have been decertified as a result of this policy and have opted for ADC status.

However, a focus on removal from CDC status does not address the real question of adequacy of service within an Area of Operations. What constitutes adequate service within a community? The statutory objectives of the 504 program are to provide a portion of long term fixed-asset financing for small business projects that provide jobs and result in economic development. Clearly, these goals cannot be met in an Area of Operations unless loans are being packaged, processed, approved, closed and serviced by one or more CDCs. Unfortunately, SBA is aware of too many locations across the country in which present CDCs are unable or unwilling to meet the small business demand for 504 loans. Transferring an existing CDC to ADC status does not address this inadequacy. SBA has concluded that the answer lies not in decertification, but in competition and customer service.

Therefore, in § 120.835, SBA is proposing that existing CDCs be permitted to expand into Areas of Operations that are not being adequately serviced. The expanding CDC would have to show that the proposed Area of Operations is not being adequately served by the existing CDCs and that the expanding CDC is well-qualified to serve it. SBA is not proposing any geographic or size limitation on CDCs applying to service a location, but such factors will be considered in evaluating the application. A CDC must apply in writing to the SBA district office serving the geographic area in which the CDC proposes to expand.

In this context, SBA has concluded that there is no minimum loan approval number appropriate to every CDC in every location across the country. A small CDC with a rural Area of Operations and slow economic activity may be providing adequate service at a low level of approvals while a larger CDC in a metropolitan region with much economic activity may be providing inadequate service, despite having a greater number of loan approvals.

SBA has also concluded that adequate service includes adequate servicing of loans, as well as the number of loan approvals. Thus, any CDC seeking to expand will have to show that it has a history of adequate experience and expertise in both loan packaging and servicing, and that the existing CDCs in the proposed area of expansion have not been adequately packaging or servicing loans. Even if the number of loan approvals does not accurately represent the competence of a CDC, it does accurately reflect the adequacy of the market penetration of 504 financing in the proposed area of expansion.

In general, SBA will consider an Area of Operations inadequately served if the existing CDCs in the Area of Operations have not averaged, over the last two fiscal years, sufficient loan approvals for the population, as published by SBA in an annual program announcement. SBA will establish the initial formula in a program announcement upon publication of the final rule, but would like the benefit of comments on this subject before committing any specific numbers to print. SBA is considering a two or three tier formula based on the current national averages for CDC loan approvals per number of population. Suggestions have been received that the formula should be based not on population, but on the number of small businesses in the Area of Operations or some other factor. SBA is interested in comments and would like recommendations on how, if at all, to incorporate a servicing component into its approach.

SBA is proposing (§ 120.837) that all existing, temporary expansions of Areas of Operations will expire automatically 6 months after the effective date of these regulations, unless a CDC applies for permanent expansion into that Area before the expiration date. SBA believes that CDCs will best serve the small business community by making a permanent commitment to an Area of Operations. Upon showing good cause, a CDC will still be able to apply to SBA to make an individual loan for a Project outside its Area of Operations in an area not being adequately served by other CDCs (§ 120.838). Note also that the Borrower may write to the AA/FA (but not the District Director) to request the servicing of a CDC not currently serving the area. SBA has added this provision to give Borrowers more flexibility if they have a concern about the services of a particular CDC.

(b) Expenditures in Anticipation of Project. In the current regulations, costs incurred by a Borrower in anticipation of receiving a 504 loan are not eligible to be included in Project costs unless the applicant has filed a written notice with the CDC and SBA within 60 days of incurring the expense and SBA gives written approval. As a result, CDCs and SBA receive notices from many potential borrowers considering 504 financing who desire to maximize potential financing. Many of these businesses never actually apply or their applications are denied. In those cases, the written notices are a useless paperwork burden on SBA, the CDC and the applicant.

Therefore, SBA is proposing (§ 120.882(a)(2)) to eliminate the requirement for written notice. Any expense incurred toward a Project within six months of receipt by SBA of a complete loan application will be an eligible Project cost.

(c) Legal Fees. The Borrower's closing costs, including legal fees, are eligible for inclusion in the 504 loan. Typically, legal services are provided by the CDC's counsel, who is usually experienced in closing 504 loans and thus, is able to do so cost effectively. Sometimes, a Borrower will also retain an attorney. Under the current regulations, the CDC may charge the Borrower up to $2,500 for the legal services performed by the CDC counsel, unless SBA approves a higher fee in a complex case. If the fee is more than $2,500, the CDC must pay the difference. The CDC collects the fee at closing and forwards it to the closing attorney.

The $2,500 figure in the regulation has engendered much debate within the industry. Many CDCs feel the figure establishes a minimum base for attorney services and is, therefore, anti-competitive. On the other hand, during the past five months, SBA has conducted several expedited closing training sessions for CDC counsel. Many attorneys feel that the figure establishes a ceiling for attorney services and is, therefore, anti-competitive. There appears to be a wide range of prices charged by CDC counsel for closing services. Most CDCs try to minimize

counsel fees to reduce costs to the Borrower.

SBA has determined that there is no reason for SBA to refer to any legal fee amount. Whether it is viewed as a ceiling or a base, the $2,500 reference has apparently caused misunderstanding and may have had an effect on legal fees charged. SBA believes legal fees should be determined by the competitive market. Therefore, proposed §§ 120.883(d) and 120.961(a), omit any reference to amount.

(d) Eligible Use of Proceeds. In the current regulations, airplanes are not eligible for 504 loans, except that Alaskan and Hawaiian Projects may include airplanes not exceeding 20 percent of the Project cost, if they are indispensable to the Project. SBA proposes to eliminate this exception (§ 120.884(d)(2)), previously justified because of the great distances people must travel in those states. But distances are great in many mainland states, as well, and airplanes simply are not directly attributable and necessary for a Project.

Also, in the current regulations there is no direct reference to the eligibility of construction equipment as a distinct sub-category of equipment and machinery. CDCs and SBA often receive questions from potential Borrowers as to whether construction equipment is eligible for 504 financing. The proposed rule in § 120.884(d)(3) clarifies that construction equipment is ineligible for 504 financing unless it is heavy duty equipment integral to the operation of a business and meeting the IRS definition of capital equipment. Note also that § 120.884(d)(1) clarifies SBA policy that short term equipment is a permitted use of loan proceeds if the equipment is essential to the Project and reflects a minor percentage of the loan. This is not a change in policy.

(e) Definitions. SBA has created several new definitions to help make the regulation easier to understand. Comments and suggestions will be appreciated.

Several definitions clarify terms long associated with the 504 program which were included in the regulations, but were not defined. These include ''Area of Operations,'' ''Certificate,'' ''Debenture,'' ''Job Opportunity,'' and ''Substantial Increase in Unemployment.''

Finally, some key words have been replaced with more useful and apt words. A ''Small Business Concern'' is now a ''Small Business.'' The term ''Underwriter'' has replaced ''Pooler.'' The term ''Project'' has replaced ''Plant.'' ''Project Property'' is a new definition previously undefined in the regulation.

(f) Minor Policy Changes. In proposed § 120.828, the minimum level of CDC lending activity is no longer set at a specific number; SBA will retain the ability to change this number through its program announcements based on program performance and the economy. In proposed § 120.939(b), CDCs will be liable for SBA losses incurred by ''wrongful CDC conduct'' as well as in cases of fraud and negligence.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule involves internal administrative procedures and would not be considered a significant rule within the meaning of Executive Order 12866 and would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. It is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects

13 CFR Part 108

Equal employment opportunity, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 116

Coastal Zone, Flood insurance, Flood plains, Lead poisoning, Small businesses, Veterans.

13 CFR Part 120

Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 122

Community development, Employee benefit plans, Energy conservation, Environmental protection, Exports, Individuals with disabilities, Loan programs-business, Loan programs-energy, Loan programs-veterans, Microloans, Reporting and recordkeeping requirements, Small businesses, Solar energy, Trusts and trustees, Veterans.

13 CFR Part 131

Loan programs-business, Small businesses.

Accordingly, pursuant to the authority set forth in sections 5 (b)(1) and (b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6) and 636 (a) and (h), SBA hereby proposes to amend Chapter I of Title 13, Code of Federal Regulations (CFR), as follows:

1. Part 120 would be revised to read as follows:

PART 120—BUSINESS LOANS

General Descriptions of SBA's Business Loan Programs

Sec.

Definitions

Subpart A—Policies Applying to All Business Loans

Eligibility Requirements

Ineligible Businesses and Eligible Passive Companies

Uses of Proceeds

Ethical Requirements

Credit Criteria for SBA Loans

Authority: 15 U.S.C 634(b)(6) and 636 (a) and (h).

General Descriptions of SBA's Business Loan Programs

§ 120.1 Which loan programs does this part cover?

This Part regulates SBA's financial assistance to small businesses under its general business loan programs (''7(a) loans'') authorized by section 7(a), 15 U.S.C. 636(a) of the Small Business Act (''the Act''), its microloan demonstration loan program (''Microloans'') authorized by section 7(m), 15 U.S.C. 636(m) of the Act, and its development company program (''504 loans'') authorized by Title V of the Small Business Investment Act, 15 U.S.C. 695 to 697f (''Title V''). These three programs constitute the business loan programs of the SBA.

§ 120.2 Descriptions of the business loan programs.

(a) *7(a) loans.* (1) 7(a) loans provide financing for general business purposes and may be:

(i) A direct loan by SBA;

(ii) An immediate participation loan by a Lender and SBA; or

(iii) A guaranteed loan (deferred participation) by which SBA guarantees a portion of a loan made by a Lender.

(2) A guaranteed loan is initiated by a Lender agreeing to make an SBA guaranteed loan to a small business and applying to SBA for SBA's guarantee under a blanket guarantee agreement (participation agreement) between SBA and the Lender. If SBA agrees to guarantee (authorizes) a portion of the loan, the Lender funds and services the loan. If the small business defaults on the loan, SBA's guarantee requires SBA to purchase its portion of the outstanding balance, upon demand by the Lender and subject to specific conditions. Regulations specific to 7(a) loans are found in subpart B of this part.

(b) *Microloans.* SBA makes loans and loan guarantees to non-profit Intermediaries that make short-term loans up to $25,000 to eligible small businesses for general business purposes, except payment of debts. SBA also gives grants to Intermediaries for use in providing management assistance and counseling to small businesses. Regulations specific to these loans are found in subpart G of this part.

(c) *504 loans.* Projects involving 504 loans require long-term fixed-asset financing for small businesses. A Certified Development Company (CDC) provides the final portion of this financing with a 504 loan made from the proceeds of a Debenture issued by the CDC, guaranteed 100 percent by SBA (with the full faith and credit of the United States), and sold to investors. The regulations specific to these loans are found in subpart H of this part.

§ 120.3 Pilot programs.

The Administrator of SBA may from time to time suspend, modify, or waive rules for a limited period of time to test new programs or ideas. The Administrator shall publish a document in the Federal Register explaining the reasons for these actions.

Definitions

§ 120.10 Definitions.

The following terms have the same meaning wherever they are used in this part. Defined terms are capitalized wherever they appear.

Associate. (1) An Associate of a Lender or CDC is:

(i) An officer, director, member, or key employee, or an agent involved in the loan-making process;

(ii) A Close Relative of any individual in paragraph (1)(i) of this definition; and

(iii) Any entity in which one or more individuals referred to in paragraphs (1)(i) and (ii) of this definition own or control at least 10 percent.

(2) An Associate of a small business is:

(i) An officer, director, member, owner, principal, key employee, or agent authorized to act on behalf of the small business;

(ii) A Close Relative of any individual in paragraph (2)(i) of this definition;

(iii) Any entity in which one or more individuals referred to in paragraphs (2)(i) and (ii) of this definition owns or controls at least 10 percent; and

(iv) Any individual or entity in control of or controlled by the small business (except a Small Business Investment Company (''SBIC'') licensed by SBA).

(3) For purposes of this definition, the time during which an Associate relationship exists commences six months before the following dates and continues as long as the certification, participation agreement, or loan is outstanding:

(i) For a CDC, the date of certification by SBA;

(ii) For a Lender, the date of application for a loan guarantee on behalf of an applicant; or

(iii) For a small business, the date of the loan application to SBA, the CDC, the Intermediary, or the Lender.

Authorization is SBA's written agreement providing the terms and conditions under which SBA will make or guarantee business loans. It is not a contract to make a loan.

Borrower is the obligor of an SBA business loan.

Certified Development Company (''CDC'') is an entity authorized by SBA to deliver 504 financing to small businesses.

Close Relative is a spouse; a parent; or a child or sibling, or the spouse of any such person.

Eligible Passive Company is a small entity which does not engage in regular and continuous business activity, which leases real or personal property to an Operating Company for use in the Operating Company's business, and which complies with the conditions set forth in § 120.111.

Intermediary is the entity in the Microloan program that receives SBA financial assistance and makes loans to small businesses in amounts up to $25,000.

Lender is an institution that has executed a participation agreement with SBA under the guaranteed loan program.

Loan Instruments are the Authorization, note, instruments of hypothecation, and all other agreements and documents related to a loan.

Operating Company is an eligible small business actively involved in conducting business operations now or about to be located on real property owned by a Passive Company, or using or about to use in its business

operations personal property owned by a Passive Company.

Preference is any arrangement giving a Lender or a CDC a preferred position compared to SBA relating to the making of a business loan with respect to such things as repayment, collateral, guarantees, control, maintainance of a compensating balance, purchase of a Certificate of deposit or acceptance of a separate or companion loan, without SBA's consent.

Rural Area is a political subdivision or unincorporated area in a non-metropolitan county (as defined by the Department of Agriculture), or, if in a metropolitan county, any such subdivision or area with a resident population under 20,000 which is designated by SBA as rural.

Service Provider is an entity that contracts with a Lender or CDC to perform management, marketing, legal or other services.

Subpart A—Policies Applying to All Business Loans

Eligibility Requirements

§ 120.100 What are the basic requirements for all Borrowers?

To be an eligible Borrower for an SBA loan, a small business must:

(a) Be an operating business (except for loans to Passive Companies);

(b) Be organized for profit;

(c) Be located in the United States;

(d) Be small under the size requirements of Part 121 of this chapter (including affiliates). See subpart H of this part for the size standards of Part 121 of this chapter which apply only to 504 loans; and

(e) Must demonstrate a need for the desired credit.

§ 120.101 Credit not available elsewhere.

SBA provides business loan assistance only to applicants for whom the desired credit is not otherwise available on reasonable terms from non-Federal sources. SBA requires the Lender or CDC to certify or otherwise show that the desired credit is unavailable to the applicant on reasonable terms and conditions from non-Federal sources without SBA assistance, taking into consideration the prevailing rates and terms in the community in or near where the applicant conducts business, for similar purposes and periods of time. Submission of an application to SBA by a Lender or CDC constitutes certification by the Lender or CDC that it has examined the availability of credit to the applicant, has based its certification upon that examination, and has documentation in its file to support the certification.

§ 120.102 Funds not available from alternative sources, including personal resources of principals.

An applicant for a business loan must show that the desired funds are not available from the personal resources of the applicant's principals or other sources such as the sale of the applicant's assets or securities. SBA may require the use of personal resources before a loan will be granted, unless SBA determines that undue hardship would result or if the loan is to an employee trust.

§ 120.103 Are farm enterprises eligible?

Federal financial assistance to agricultural enterprises is generally made by the United States Department of Agriculture (USDA), but may be made by SBA under the Memorandum of Understanding signed by SBA and USDA. Farm-related businesses are eligible businesses under SBA's business loan programs.

§ 120.104 Are businesses financed by SBICs eligible?

SBA may make or guarantee loans to a business financed by an SBIC if SBA's collateral position will be superior to that of the SBIC. SBA may also make or guarantee a loan to an otherwise eligible small business which temporarily is owned or controlled by an SBIC under the regulations in part 107 of this chapter. SBA neither guarantees SBIC loans nor makes loans jointly with SBICs.

§ 120.105 Special consideration for veterans.

SBA will give special consideration to a small business owned by a veteran or, if the veteran chooses not to apply, to a business owned or controlled by one of the veteran's dependents. If the veteran is deceased or permanently disabled, SBA will give special consideration to one survivor or dependent. SBA will process the application of a business owned or controlled by a veteran or dependent promptly, resolve close questions in the applicant's favor, and pay particular attention to maximum loan maturity. For SBA loans, a veteran is a person honorably discharged from active military service.

Ineligible Businesses and Eligible Passive Companies

§ 120.110 What businesses are ineligible for SBA business loans?

The following types of businesses are ineligible:

(a) Non-profit businesses (for-profit subsidiaries are eligible);

(b) Financial businesses primarily engaged in the business of lending, such as banks, finance companies, and factors (pawn shops, although engaged in lending, may qualify in some circumstances);

(c) Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds (except Eligible Passive Companies under § 120.111);

(d) Life insurance companies;

(e) Businesses located in a foreign country (businesses in the U.S. owned by aliens may qualify);

(f) Pyramid sale distribution plans;

(g) Businesses deriving more than one-third of gross annual income from legal gambling activities);

(h) Businesses engaged in any illegal activity;

(i) Private clubs and businesses which limit the number of memberships for reasons other than capacity;

(j) Government-owned entities (except for businesses owned or controlled by a Native American tribe);

(k) Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting;

(l) Consumer and marketing cooperatives (producer cooperatives are eligible);

(m) Loan packagers earning 30 percent or more of their gross annual revenue from packaging SBA loans;

(n) Businesses with an Associate considered to have control under Part 121 who is incarcerated, on probation, on parole, or subject to pending felony charges;

(o) Businesses in which the Lender or CDC, or any of its Associates owns an equity interest (unless waived by SBA for good cause in the case of minor ownership interests);

(p) Businesses which:

(1) Present live performances of a prurient sexual nature; or

(2) Derive significant gross revenue through the sale of products or services, or the presentation of depictions or displays, of a prurient sexual nature;

(q) Unless waived by SBA for good cause, businesses that have previously defaulted on a Federal loan or Federally assisted financing, resulting in the Federal government or any of its agencies or Departments sustaining a loss in any of its programs, and businesses owned or controlled by an applicant or any of its Associates which previously owned, operated, or controlled a business which defaulted

on a Federal loan and caused the Federal government or any of its agencies or Departments to sustain a loss in any of its programs. For purposes of this section, a compromise agreement shall also be considered a loss; and

(r) Businesses primarily engaged in political or lobbying activities.

§ 120.111 What conditions must an Eligible Passive Company satisfy?

An Eligible Passive Company must use loan proceeds to acquire or lease, and/or improve or renovate real or personal property (including eligible refinancing) that it leases to an Operating Company for the conduct of the Operating Company's business. Any ownership structure or legal form may qualify as a Eligible Passive Company, except revocable trusts and other grantor trusts.

(a) Conditions that apply to all legal forms:

(1) The Operating Company is an eligible small business, and the proposed use of the proceeds would have been an eligible use if the Operating Company were obtaining the financing directly;

(2) Both the Eligible Passive Company and the Operating Company must be small under the appropriate size standards in part 121 of this chapter;

(3) The lease between the Eligible Passive Company and the Operating Company must be in writing and must be subordinated to SBA's mortgage, trust deed lien, or security interest on the property. Also, the Eligible Passive Company (as landlord) must furnish as collateral for the loan an assignment of all rents paid under the lease;

(4) The lease, including options to renew exercisable solely by the Operating Company, must have a remaining term at least equal to the term of the loan;

(5) The Operating Company must be a guarantor or a co-borrower (with the Eligible Passive Company) of the loan; and

(6) Each holder of an ownership interest constituting at least 20 percent of the Eligible Passive Company or the Operating Company must guarantee the loan (the trustee shall execute the guarantee on behalf of any trust).

(b) Additional conditions that apply to irrevocable trusts. A trust qualifying as a Eligible Passive Company may engage in other activities as authorized by its trust agreement. For purposes of this section, the trustee shall certify to SBA that:

(1) The trustee has authority to act;

(2) The trust is irrevocable, and is not regarded as a grantor trust for tax purposes;

(3) The trust has the authority to borrow funds, pledge trust assets, and lease the property to the Operating Company;

(4) The trustee has provided accurate, pertinent language from the trust agreement confirming the above; and

(5) The trustee has provided and will continue to provide SBA with a true and complete list of all trustors and donors.

Uses of Proceeds

§ 120.120 What are eligible uses of proceeds?

A small business must use an SBA loan for sound business purposes. The uses of proceeds are prescribed in each loan's Authorization.

(a) A Borrower may use loan proceeds from any SBA loan to:

(1) Acquire land (by purchase or lease);

(2) Improve a site (grading, streets, parking lots, landscaping);

(3) Purchase an existing building;

(4) Convert, expand or renovate an existing building;

(5) Construct a new building; and/or

(6) Acquire (by purchase or lease) and install machinery and equipment (in the 504 program, with a useful life of at least 10 years and at a fixed location, unless essential to the Project).

(b) A Borrower may also use 7(a) and microloan proceeds for:

(1) Inventory;

(2) Supplies;

(3) Raw materials;

(4) Working capital; and

(5) Refinancing certain outstanding debts.

§ 120.130 Restrictions on uses of proceeds.

SBA will not authorize nor may a Borrower use loan proceeds for the following purposes (including the replacement of funds used for any such purpose):

(a) Payments, distributions or loans to Associates of the applicant (except for ordinary compensation for services rendered);

(b) Refinancing a debt owed to a Small Business Investment Company (''SBIC'');

(c) Speculation in any kind of real or personal property;

(d) Floor plan financing or other revolving line credit, except under § 120.390;

(e) Investments in real or personal property acquired and held primarily for sale, lease, or investment and not used within 3 years in an otherwise eligible business (except for a loan to an Eligible Passive Company or to a small contractor under § 120.310);

(f) A purpose which does not benefit the small business; or

(g) Any use restricted by §§ 120.201–120.203 and 120.884 (specific to 7(a) loans and 504 loans respectively).

Ethical Requirements

§ 120.140 What ethical requirements apply to participants?

Lenders, Intermediaries, CDCs, Associate Development Companies (''ADCs'') and their Associates (in this section ''Participants'') must act ethically and exhibit good character. Ethical indiscretion of an Associate shall be attributed to the Participant. A Participant must promptly notify SBA if it obtains information concerning the unethical behavior of an Associate. The following are examples of such unethical behavior. A Participant may not:

(a) Self-deal;

(b) Have a real or apparent conflict of interest with a small business with which it is dealing (including any of its Associates) or SBA;

(c) Own an equity interest in a business that has received or is applying to receive SBA financing (during the term of the loan or within 6 months prior to the loan application);

(d) Be incarcerated, on parole, or on probation;

(e) Knowingly misrepresent or make a false statement to SBA;

(f) Engage in conduct reflecting a lack of business integrity or honesty;

(g) Be a convicted felon, or have an adverse final civil judgment (in a case involving fraud, breach of trust, or other conduct) that would cause the public to question the Participant's business integrity, taking into consideration such factors as the magnitude, repetition, harm caused, and remoteness in time of the activity or activities in question;

(h) Accept funding from any source that restricts, prioritizes, or conditions the types of small businesses that the CDC, ADC, or Intermediary may assist under an SBA program or that imposes any conditions or requirements upon recipients of SBA assistance inconsistent with SBA's loan programs or regulations;

(i) Fail to disclose to SBA all relationships between the small business and its Associates, the Participant, and/or the lenders financing the Project;

(j) Fail to disclose to SBA whether the loan will:

(1) Reduce the exposure of a Lender in a position to sustain a loss;

(2) Directly or indirectly finance the purchase of real estate, personal property or services (including insurance) from the Participant;

(3) Repay or refinance a debt due a Participant;

(4) Require the small business, or an Associate, to invest in the Participant (except for institutions which require an investment from all members as a condition of membership, such as a Production Credit Association); or

(5) Involve a Lender, CDC or Associate that has issued a commitment to make or consider the loan prior to receipt of the loan application, including a forward commitment to a builder or developer; or

(k) Engage in any activity which taints its objective judgment in evaluating the loan.

Credit Criteria for SBA Loans

§ 120.150 What are SBA's lending criteria?

The Borrower (and the Operating Company) must be creditworthy. Loans must be so sound as to assure repayment. SBA will consider:

(a) Character, reputation, and credit history of the Borrower (and the Operating Company, if applicable), its Associates, and guarantors;

(b) Experience and depth of management;

(c) Strength of the business;

(d) Past earnings, projected cash flow, and future prospects;

(e) Ability to repay the loan with earnings from the business;

(f) Sufficient invested equity to operate on a sound financial basis;

(g) Potential for long-term success; and

(h) Nature and value of collateral. (Inadequate colateral will not be the sole reason for denial of a loan request.)

§ 120.151 What is the statutory limit for total loans to a Borrower?

The aggregate amount of the SBA portions of all loans to a single Borrower, including the Borrower's affiliates as defined in part 121 of this chapter, shall not exceed $750,000, except as otherwise authorized by statute for a specific loan program.

§ 120.160 Loan conditions.

The following requirements are normally required by SBA for all business loans:

(a) *Personal guarantees.* Associates and holders of at least a 20 percent ownership interest generally must guarantee the loan. SBA, in its discretion, may require holders of interests of less than 20 percent to guarantee the loan.

(b) *Appraisals.* SBA may require professional appraisals of the applicant's and principals' assets, a survey, or a feasibility study.

(c) *Hazard Insurance.* SBA requires hazard insurance on all collateral.

(d) *Taxes.* If any portion of the loan proceeds will be used for working capital, the applicant may not use any of the proceeds to pay past-due Federal and state payroll taxes.

§ 120.161 Lending limits.

The outstanding balance of all SBA financial assistance to a Borrower and its affiliates under the business loan programs covered by this Part must not exceed $750,000 (except as otherwise authorized for a specific loan program).

Requirements Imposed Under Other Laws and Orders

§ 120.170 Flood insurance.

Under the Flood Disaster Protection Act of 1973 (Sec. 205(b) of Public Law 93–234; 87 Stat. 983 (42 U.S.C. 4000 *et seq.*)), a loan recipient must obtain flood insurance if any building (including mobile homes), machinery, or equipment acquired, installed, improved, constructed, or renovated with the proceeds of SBA financial assistance is located in a special flood hazard area. The requirement applies also to any inventory (business loan program), fixtures or furnishings contained or to be contained in the building. Mobile homes on a foundation are buildings. SBA, Lenders, CDCs, and Intermediaries must notify Borrowers that flood insurance must be maintained.

§ 120.171 Compliance with child support obligations.

Any holder of 50% or more of the ownership interest in the recipient of an SBA loan must certify that he or she is not more than 60 days delinquent on any obligation to pay child support arising under:

(a) An administrative order;

(b) A court order;

(c) A repayment agreement between the recipient and the custodial parent; or

(d) A repayment agreement between the recipient and a State agency providing child support enforcement services.

§ 120.172 Flood-plain and wetlands management.

(a) All loans must conform to requirements of Executive Orders 11988, ''Flood Plain Management'' (3 CFR, 1977 Comp., p. 117) and 11990, ''Protection of Wetlands'' (3 CFR, 1977 Comp., p. 121). Lenders, Intermediaries, CDCs, and SBA must comply with requirements applicable to them. Applicants must show:

(1) Whether the location for which financial assistance is proposed is in a floodplain or wetland;

(2) If it is in a floodplain, that the assistance is in compliance with local land use plans; and

(3) That any necessary construction or use permits will be issued.

(b) Generally, there is an 8-step decision making process with respect to:

(1) Construction or acquisition of anything, other than a building;

(2) Repair and restoration equal to more than 50% of the market value of a building; or

(3) Replacement of destroyed structures.

(c) SBA may determine for the following types of actions, on a case-by-case basis, that the full 8-step process is not warranted and that only the first step (determining if a proposed action is in the base floodplain) need be completed:

(1) Actions located outside the base floodplain;

(2) Repairs, other than to buildings, that are less than 50% of the market value;

(3) Replacement of building contents, materials, and equipment;

(4) Hazard mitigation measures;

(5) Working capital loans; and

(6) SBA loan assistance of $1,500,000 or less.

§ 120.173 Lead-based paint.

If loan proceeds are for the construction or rehabilitation of a residential structure, lead-based paint may not be used on any interior surface, or on any exterior surface that is readily accessible to children under the age of 7.

§ 120.174 Earthquake hazards.

When loan proceeds are used to construct a new building or an addition to an existing building, the construction must conform with the ''National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Buildings,'' obtainable from the Interagency Committee on Seismic Safety in Construction.

§ 120.175 Coastal barrier islands.

SBA and Intermediaries may not make or guarantee any loan within the Coastal Barrier Resource System.

§ 120.176 Compliance with other laws.

All SBA loans are subject to all applicable laws, including (without limitation) the civil rights laws (see Parts 112, 113, 117 and 136 of this chapter), prohibiting discrimination on the grounds of race, color, national origin, religion, sex, marital status, disability or age. SBA requests agreements or evidence to support or document compliance with these laws, including reports required by applicable statutes or the regulations in this chapter.

Enforceability Despite Rule Changes

§ 120.180 Are rules enforceable if they are changed later?

Regulations and contractual provisions in effect at the time of a transaction govern an SBA loan financing transaction, notwithstanding subsequent rule or contract changes. SBA may conduct an enforcement action regarding any violation of provisions of regulations or contracts applicable at the time, but no longer in effect or in use.

Loan Applications

120.190 Where does an applicant apply for a loan?

An applicant for a loan should apply to:

(a) A Lender for a guaranteed or immediate participation loan;

(b) A CDC for a 504 loan;

(c) An Intermediary for a Microloan; or

(d) SBA for a direct loan.

§ 120.191 The contents of a business loan application.

SBA requires that an application for a business loan contain, among other things, a description of the history and nature of the business, the amount and purpose of the loan, the collateral offered for the loan, current financial statements, historical financial statements (or tax returns if appropriate) for the past three years, and a business plan, when applicable. Personal histories and financial statements will be required from principals of the applicant (and the Operating Company, if applicable).

§ 120.192 Approval or denial.

Applicants receive notice of approval or denial by the Lender, CDC, Intermediary, or SBA, as appropriate. Notice of denial will include the reasons. If a loan is approved, an Authorization will be issued.

§ 120.193 Reconsideration after denial.

An applicant or recipient of a business loan may request reconsideration of a denied loan or loan modification request within 6 months of denial. Applicants denied due to a size determination can appeal that determination under part 121 of this chapter. All others, including those requesting modification of an existing loan condition, can only appeal to the office that denied the initial loan application or request. To prevail, the applicant must demonstrate that it has overcome all legitimate reasons for denial. Six months after denial, a new application is required. If the reconsideration is denied, an applicant may request a final reconsideration by the AA/FA, whose decision is final.

Computerized SBA Forms

§ 120.194 Use of computer forms.

Any applicant or other party involved in SBA Business Loan Programs may use computer generated SBA application forms, closing forms, and other forms designated by SBA if the forms are exact reproductions of SBA forms.

§ 120.195 Duty of Lender, CDC, Intermediary Lender, and Borrower to report fees.

(a) A Lender, CDC, or Intermediary Lender must report to SBA all fees of which it has knowledge or which it charges the applicant, including insurance fees. It must refund to the applicant any fees that SBA considers excessive. Failure to do so may result in an action by SBA to suspend or revoke the Lender's participation status.

(b) An applicant for a business loan must certify to SBA the name of each individual or entity (attorney, loan packager, broker, accountant, Service Provider, Lender) that helped the applicant obtain the loan, describing the services performed, and disclosing the amount of each fee.

Subpart B—Policies Specific to 7(a) Loans

Bonding Requirements

§ 120.200 What bonding requirements exist during construction?

On 7(a) loans where the SBA guarantee covers a period of construction, the Borrower must supply a 100 percent payment and performance bond and builder's risk insurance, unless waived by SBA.

Limitations on Use of Proceeds

§ 120.201 Refinancing unsecured or undersecured loans.

A Borrower may not use 7(a) loan proceeds to pay off an inadequately secured creditor, including a Lender, causing a shift to SBA of all or part of a potential loss from an existing debt.

§ 120.202 Restrictions on loans for changes in ownership.

A Borrower may not use loan proceeds to purchase a portion of a business or a portion of another owner's interest. One or more current owners may use loan proceeds to purchase the entire interest of another current owner, or a Borrower can purchase ownership of an entire business.

§ 120.203 Revolving credit.

SBA may not use its regular 7(a) program for a revolving line of credit, such as ''floor plan'' financing. (See § 120.390 for special Caplines program.)

Maturities; Interest Rates; Loan and Guarantee Amounts

§ 120.210 What percentage of a loan may SBA guarantee?

SBA's guarantee percentage must not exceed the applicable percentage established in section 7(a) of the Act. The maximum allowable guarantee percentage on a loan will be determined by the *loan amount.* As of October 31, 1995, the percentages are: Loans of $100,000 or less may receive a maximum guarantee of 80 percent. All other loans may receive a maximum guarantee of 75 percent, not to exceed $750,000.

§ 120.211 What limits are there on the amounts of direct loans?

(a) The statutory limit for direct loans made under the authority of section 7(a)(1)–(19) of the Small Business Act is $350,000. SBA has established an administrative limit of $150,000 for direct loans. The Associate Administrator for Financial Assistance (AA/FA) may authorize acceptance of an application up to the statutory limit.

(b) The statutory limit for direct loans made under the authority of section 7(a)(20) is $750,000. SBA has established an administrative limit of $150,000. The Associate Administrator for Minority Enterprise Development may authorize the acceptance of an application that exceeds the administrative limit.

(c) The statutory limit on SBA's portion of an immediate participation loan is the lesser of 90 percent of the loan or $350,000. The administrative limit is the lesser of 75 percent of the loan or $150,000. The AA/FA may authorize exceptions to the administrative limit up to $350,000.

§ 120.212 What limits are there on loan maturities?

The term of a loan shall be:

(a) The shortest appropriate term, depending upon the Borrower's ability to repay;

(b) Ten years or less, unless it finances or refinances real estate or equipment with a useful life exceeding ten years; and

(c) A maximum of 25 years, including extensions. (A portion of a loan used to acquire or improve real property may have a term of 25 years plus an additional period needed to complete the construction or improvements.)

§ 120.213 What fixed interest rates may a Lender charge?

(a) *Fixed Rates for Guaranteed Loans.* A loan may have a reasonable fixed interest rate. SBA periodically publishes the maximum allowable rate in the Federal Register.

(b) *Direct loans.* A statutory formula based on the cost of money to the Federal government determines the interest rate on direct loans. SBA publishes the rate periodically in the Federal Register.

§ 120.214 What conditions apply for variable interest rates?

A Lender may use a variable rate of interest, upon SBA's approval. SBA's maximum allowable rates apply only to the initial rate on the date SBA received the loan application. SBA shall approve the use of a variable interest rate under the following conditions:

(a) *Frequency.* The first change may occur on the first calendar day of the month following initial disbursement, using the base rate (see paragraph (c) of this section) in effect on the first business day of the month. After that, changes may occur no more often than monthly.

(b) *Range of fluctuation.* The amount of fluctuation shall be equal to the movement in the base rate. The difference between the initial rate and the ceiling rate may be no greater than the difference between the initial rate and the floor rate.

(c) *Base rate.* The base rate shall be the prime rate in effect on the first business day of the month, printed in a national financial newspaper published each business day, or the SBA Optional Peg Rate which SBA publishes quarterly in the Federal Register.

(d) *Maturities under 7 years.* For loans with maturities under seven years, the maximum interest rate shall not exceed two and one-quarter (2¼) percentage points over the base rate.

(e) *Maturities of 7 years or more.* For loans with maturities of seven or more years, the maximum interest rate shall not exceed two and three-quarters (2¾) percentage points over the base rate.

(f) *Higher interest rates for smaller loans.* For a variable rate loan over $25,000 but not exceeding $50,000, the interest rate may be one percent more than the maximum interest rate described above. For a variable rate loan of $25,000 or less, the maximum interest rate described above may be increased by two percentage points.

(g) *Amortization.* Initial amortization of principal and interest may be recomputed as interest rates fluctuate, as directed by SBA. With prior approval of SBA, the Lender may use certain other amortization methods.

Fees for Guaranteed Loans

§ 120.220 Guarantee fees that Lender pays SBA.

(a) The Lender pays a guarantee fee to SBA for each loan as follows:

Guaranteed portion of loan	Fee measured as percentage of guaranteed portion	When payable	Lender may get fee from borrower	When SBA refunds fee from borrower
Under 12 months	.25%	With guarantee application.	When SBA approves loan.	If application withdrawn or denied [1]
More than 12 months and total guaranteed portion is $80,000 or less.	2.0% of guaranteed portion.	Within 90 days of SBA approval.	After First disbursement.	If loan cancelled and never disbursed
More than 12 months and amount of guaranteed portion of loan that is $250,000 or less.	3%	Within 90 days of SBA approval.	After first disbursement.	If loan cancelled and never disbursed
More than 12 months and amount of guaranteed portion of loan between $250,000 and $500,000.	3.0% of 1st $250,000 plus 3.5% of balance.	Within 90 days of SBA approval.	After first disbursement.	If loan cancelled and never disbursed
More than 12 months and amount of guaranteed portion of loan exceeding $500,000.	3.0% of 1st $250,000 plus 3.5% of next $250,000 plus 3.875% of the amount exceeding $500,000.	Within 90 days of SBA approval.	After first disbursement.	If loan cancelled and never disbursed.

[1] Also, if SBA substantially changes the Lender's loan terms and approves the loan, but the modified terms are unacceptable to the Borrower or Lender. (The Lender must request refund in writing within 30 calendar days of the approval).

(b) The Lender shall also pay SBA an annual fee equal to 0.5 percent of the outstanding balance of the guaranteed portion of each loan.

(c) If the guarantee fee is not paid, SBA may terminate the guarantee. The Borrower may use loan proceeds to reimburse the Lender for the guarantee fee. Acceptance of the guarantee fee by SBA shall not waive any right of SBA arising from the Lender's misconduct or violation of any provision of this part, the guarantee agreement, the Authorization, or other loan documents.

§ 120.221 Fees which the Lender may collect from a loan applicant.

(a) *Service and packaging fees.* The Lender may charge an applicant reasonable fees (customary for similar Lenders in the geographic area where the loan is being made) for packaging and other services. The Lender must advise the applicant in writing that the applicant is not required to obtain or pay for unwanted services. The applicant is responsible for deciding whether fees are reasonable. SBA may review these fees at any time. Lender must refund any such fee considered unreasonable by SBA.

(b) *Commitment fee for Export Working Capital loan.* After SBA approves a loan under the Export Working Capital Program, the Lender may charge the borrower a commitment fee of ¼ of 1 percent (or $200 minimum) of the loan.

(c) *Extraordinary servicing.* Subject to prior written SBA approval, if all or part of a loan will have extraordinary servicing needs, the Lender may charge the applicant a service fee not to exceed 2 percent per year on the outstanding balance of the part requiring special servicing.

(d) *Out-of-pocket expenses.* The Lender may collect from the applicant

necessary out-of-pocket expenses such as filing or recording fees.

(e) *Late payment fee.* The Lender may charge the Borrower a late payment fee not to exceed 5 percent of the regular loan payment.

(f) *No prepayment fee.* The Lender may not charge a fee for full or partial prepayment of a loan.

§ 120.222 Fees which the Lender or Associate may not collect from the Borrower or share with third parties.

The Lender or its Associate may not:

(a) Require the applicant or Borrower to pay the Lender, an Associate, or any party designated by either, any fees or charges for goods or services, including insurance, as a condition for obtaining an SBA guaranteed loan (unless permitted by this part);

(b) Charge an applicant any commitment, bonus, broker, commission, or similar fee;

(c) Charge points or add-on interest;

(d) Share any premium received from the sale of an SBA guaranteed loan in the secondary market with either a packager or other loan-referral source; or

(e) Charge the Borrower for legal services, unless they are hourly charges for requested services actually rendered.

Subpart C—Special Purpose Loans

§ 120.300 Statutory authority.

In addition to the general 7(a) business loan program, Congress has authorized several special purpose programs in various subsections of the Act. Generally, the regular 7(a) loan policies, eligibility requirements and credit criteria apply. The sections of this subpart prescribe the special conditions applying to each special purpose program. As with other business loans, special purpose loans are available only to the extent funded by annual appropriations.

Disabled Assistance Loan Program (DAL)

§ 120.310 What assistance is available for the disabled?

Section 7(a)(10) of the Act authorizes SBA to guarantee or make direct loans to the disabled. SBA distinguishes two kinds of assistance:

(a) *DAL–1.* DAL–1 Financial Assistance is available to non-profit public or private organizations for the disabled that employ the disabled; or

(b) *DAL–2.* DAL–2 Financial Assistance is available to:

(1) Small businesses wholly owned by the disabled; and

(2) Disabled individuals to establish, acquire, or operate a small business.

§ 120.311 Definitions.

(a) *Organization for the disabled* means one which:

(1) Is organized under federal or state law to operate in the interest of the disabled;

(2) Is non-profit;

(3) Employs disabled individuals for seventy-five percent of the time needed to produce commodities or services for sale; and

(4) Complies with occupational and safety standards prescribed by the Department of Labor.

(b) *Disabled individual* means a person who has a permanent physical, mental or emotional impairment, defect, ailment, disease or disability which limits the type of employment for which the person would otherwise be qualified.

§ 120.312 DAL–1 use of proceeds and other program conditions.

(a) DAL–1 applicants must submit appropriate documents to establish program eligibility.

(b) Generally, applicants may use loan proceeds for any 7(a) loan purposes. Loan proceeds may not be used:

(1) To purchase or construct facilities if construction grants and mortgage assistance are available from another Federal source; or

(2) For supportive services (expenses incurred by a DAL–1 organization to subsidize wages of low producers health and rehabilitation services, management, training, education, and housing of disabled workers).

(c) SBA does not consider a DAL–1 organization to have a conflict of interest if one or more of its Associates is an Associate of the Lender.

§ 120.313 DAL–2 use of proceeds and other program conditions.

(a) The DAL–2 loan proceeds may be used for normal 7(a) loan purposes.

(b) An applicant may use DAL–2 loan proceeds to acquire an eligible small business without complying with the change of ownership conditions in § 120.206.

(c) A DAL–2 applicant must submit evidence from a physician, psychiatrist, or other qualified professional as to the permanent nature of the disability and the limitation it places on the applicant.

§ 120.314 Resolving doubts about creditworthiness.

For the purpose of the DAL Program, SBA shall resolve doubts concerning the creditworthiness of an applicant in favor of the applicant. However, the applicant must present satisfactory evidence of repayment ability. Personal guarantees of Associates are not required.

§ 120.315 Interest rate and loan limit.

The interest rate on direct DAL loans is three percent. There is an administrative limit of $150,000 on a direct DAL loan.

Businesses Owned by Low Income Individuals

§ 120.320 Policy.

Section 7(a)(11) of the Act authorizes SBA to make or guarantee loans to establish, preserve or strengthen small business concerns:

(a) Located in an area having high unemployment according to the Department of Labor;

(b) Located in an area in which a high percentage of individuals have a low income inadequate to satisfy basic family needs; and

(c) More than 50 percent owned by low income individuals.

Energy Conservation

§ 120.330 Who is eligible for an energy conservation loan?

SBA may make or guarantee loans to assist a small business to design, engineer, manufacture, distribute, market, install, or service energy devices or techniques designed to conserve the Nation's energy resources.

§ 120.331 What devices or techniques are eligible for a loan?

Eligible energy conservation devices or techniques include:

(a) Solar thermal equipment;

(b) Photovoltaic cells and related equipment;

(c) A product or service which increases the energy efficiency of existing equipment, methods of operation or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy;

(d) Equipment producing energy from wood, biological waste, grain or other biomass energy sources;

(e) Equipment for cogeneration of energy, district heating or production of energy from industrial waste;

(f) Hydroelectric power equipment;

(g) Wind energy conversion equipment; and

(h) Engineering, architectural, consulting, or other professional services necessary or appropriate for any of the devices or techniques in paragraphs (a) through (g) of this section.

§ 120.332 What are the eligible uses of proceeds?

(a) *Acquire property.* The Borrower may use the loan proceeds to acquire land necessary for imminent plant construction, buildings, machinery,

equipment, furniture, fixtures, facilities, supplies, and material needed to accomplish any of the eligible program purposes in § 120.330.

(b) *Research and development.* Up to 30% of loan proceeds may be used for research and development:

(1) Of an existing product or service; or

(2) A new product or service.

(c) *Working capital.* The Borrower may use proceeds for working capital for entering or expanding in the energy conservation market.

§ 120.333 Are there any special credit criteria?

In addition to regular credit evaluation criteria, SBA shall weigh the greater risk associated with energy projects. SBA shall consider such factors as quality of the product or service, technical qualifications of the applicant's management, sales projections, and financial status.

Export Working Capital Program (EWCP)

§ 120.340 What is the Export Working Capital Program?

Under the EWCP, SBA guarantees a revolving line of credit for export purposes (section 7(a)(14) of the Act). Loan maturities may be for up to three years with annual renewals. Proceeds can be used only to finance export transactions. Loans can be for single or multiple export sales.

§ 120.341 Who is eligible?

In addition to the criteria applicable to all 7(a) loans, an applicant must be in business for one full year at the time of application, but not necessarily in the exporting business. SBA may waive this requirement if the applicant has sufficient export trade experience or other managerial experience.

§ 120.342 What are eligible uses of proceeds?

Loan proceeds may be used:

(a) To acquire inventory;

(b) To pay the manufacturing costs of goods for export;

(c) To purchase goods or services for export;

(d) To support standby letters of credit;

(e) To develop or penetrate foreign markets;

(f) For pre-shipment working capital; and

(g) For post-shipment exposure coverage.

§ 120.343 Collateral.

A Borrower must give SBA a first security interest sufficient to cover 100 percent of the EWCP loan amount (such as insured accounts receivable or letters of credit). Collateral must be located in the United States, its territories or possessions.

§ 120.344 Cash flow projections.

An applicant must submit cash flow projections to support the need for the loan and the ability to repay. After the loan is made, the loan recipient must submit monthly progress reports.

International Trade Loans

§ 120.345 Policy.

Section 7(a)(16) of the Act authorizes SBA to guarantee loans to small businesses that are:

(a) Engaged or preparing to engage in international trade; or

(b) Adversely affected by import competition.

§ 120.346 Eligibility.

(a) An applicant must establish that:

(1) The loan proceeds will significantly expand an existing export market or develop new export markets; or

(2) The applicant business is adversely affected by import competition; and

(3) Upgrading facilities or equipment will improve the applicant's competitive position.

(b) The applicant must have a business plan reasonably supporting its projected export sales.

§ 120.347 Use of proceeds.

The Borrower may use loan proceeds to acquire, construct, renovate, modernize, improve, or expand facilities and equipment to be used in the United States to produce goods or services involved in international trade.

§ 120.348 Amount and percentage of guarantee.

SBA can guarantee up to $1,250,000 for a combination of fixed-asset financing and working capital, supplies and EWCP assistance. The non-fixed-asset portion cannot exceed $750,000.

Qualified Employee Trusts (ESOP)

§ 120.350 Policy.

Section 7(a)(15) of the Act authorizes SBA to guarantee a loan to a qualified employee trust (''ESOP'') to:

(a) Help finance the growth of its employer's small business; or

(b) Purchase ownership or voting control of the employer.

§ 120.351 Definitions.

All terms specific to ESOPs have the same definition for purposes of this section as in the Internal Revenue Service (IRS) Code (title 26 of the United States Code) or regulations (26 CFR chapter I).

§ 120.352 Use of proceeds.

Loan proceeds may be used for two purposes.

(a) *Qualified employer securities.* A qualified employee trust may relend loan proceeds to the employer by purchasing qualified employer securities. The small business concern may use these funds for any general 7(a) purpose.

(b) *Control of employer.* A qualified employee trust may use loan proceeds to purchase a controlling interest (51 percent) in the employer. Ownership and control must vest in the trust by the time the loan is repaid.

§ 120.353 Eligibility.

SBA may assist a qualified employee trust (or equivalent trust) that meets the requirements and conditions for an ESOP prescribed in all applicable IRS, Treasury and DOL regulations. In addition, the following conditions apply:

(a) The small business must provide the funds needed by the trust to repay the loan; and

(b) The small business must provide adequate collateral.

§ 120.354 Creditworthiness.

In determining repayment ability, SBA shall not consider the personal assets of the employee-owners of the trust. SBA shall consider the earnings history and projected future earnings of the employer small business. SBA may consider the business and management experience of the employee-owners. SBA must have evidence that financial assistance is not otherwise available by utilizing:

(a) The personal resources and credit of the principals of the small business;

(b) The resources and credit of the small business; or

(c) The sale of the assets of the small business.

Veterans Loan Program

§ 120.360 Which veterans are eligible?

SBA may make a direct loan to a small business 51 percent owned by one or more of the following eligible veterans:

(a) Vietnam-era veterans who served for a period of more than 180 days between August 5, 1964, and May 7, 1975, and were discharged other than dishonorably;

(b) Disabled veterans of any era with a minimum compensable disability of 30 percent; or

(c) A veteran of any era who was discharged for disability.

§ 120.361 Other conditions of eligibility.

(a) Management and daily operations of the business must be directed by one or more of the veteran owners whose veteran status was used to qualify for the loan.

(b) This direct loan program is available only if private sector financing and guaranteed loans are not available.

(c) A veteran may qualify only once for this direct loan program.

Pollution Control Program

§ 120.370 Policy.

Section 7(a)(12) of the Act authorizes SBA to guarantee loans up to $1,000,000 to an eligible small business to plan, design or install a pollution control facility. An applicant must meet the eligibility requirements for 7(a) loans.

Loans to Participants in the 8(a) Program

§ 120.375 Policy.

Section 7(a)(20) of the Act authorizes SBA to provide direct (unilaterally or together with Lenders) or guaranteed loans to firms participating in the 8(a) Program.

§ 120.376 Special requirements.

The following special conditions apply (otherwise, the general 7(a) eligibility criteria apply):

(a) The Associate Administrator of Minority Enterprise Development (''MED'') may waive the direct loan administrative ceiling of $150,000, and raise it to $750,000.

(b) The SBA portion on a guaranteed loan must not exceed $750,000.

(c) The interest rate on a guaranteed loan shall be the same as on regular 7(a) guarantee loans. The interest rate on a direct loan shall be one percent less than on a regular direct loan.

(d) For a direct loan or SBA's portion of an immediate participation loan, SBA shall subordinate its security interest on all collateral to other debt of the applicant.

§ 120.377 Use of proceeds.

The loan proceeds shall not be used for debt refinancing. A manufacturing concern may use loan proceeds for working capital.

Defense Economic Transition Assistance

§ 120.380 Program.

Section 7(a)(21) of the Act authorizes SBA to guarantee loans to help eligible small businesses transition from defense to civilian markets, or eligible individuals adversely impacted by base closures or defense cutbacks to acquire or open and operate a small business.

§ 120.381 Eligibility.

(a) *Eligible small businesses.* A small business is eligible if it has been detrimentally impacted by the closure (or substantial reduction) of a Department of Defense installation, or the termination (or substantial reduction) of a Department of Defense Program on which the small business was a prime contractor, subcontractor, or supplier at any tier.

(b) *Eligible individual.* An eligible individual, for purposes of this program, includes the following persons involuntarily separated from their position or voluntarily terminated under a program offering inducements to encourage early retirement:

(1) A member of the Armed Forces of the United States (honorably discharged);

(2) A civilian employee of the Department of Defense; or

(3) An employee of a prime contractor, sub-contractor, or supplier at any tier of a Department of Defense program.

§ 120.382 Repayment ability.

SBA shall resolve reasonable doubts concerning the small business' proposed business plan for transition to non-defense-related markets in favor of the loan applicant in determining the sound value of the proposed loan.

§ 120.383 Restrictions on loan processing.

Since greater risk may be associated with a loan to an applicant under this program, a Certified Lender or Preferred Lender shall not make a defense economic assistance loan.

CapLines Program

§ 120.390 Revolving credit.

CapLines finances small businesses' short-term, revolving working-capital needs. Generally, SBA regulations governing the 7(a) program also govern this program. Under CapLines, SBA generally can guarantee up to $750,000.

Small General Contractors

§ 120.391 What is the Small General Contractor Program?

SBA may make or guarantee loans to finance small general contractors to construct or rehabilitate residential or commercial property for resale (section 7(a)(9) of the Act). This program provides an exception under specified conditions to the general rule against financing investment property. ''Construct'' and ''rehabilitate'' mean only work done on-site to the structure, utility connections and landscaping.

§ 120.392 Who may apply?

A construction contractor or home-builder with a past history of profitable construction or rehabilitation projects of comparable type and size may apply. An applicant may subcontract a portion of the work. Subcontracts in excess of $25,000 may require 100 percent payment and performance bonds.

§ 120.393 Are there special application requirements?

(a) An applicant must submit letters from:

(1) A mortgage lender indicating that permanent mortgage money is available to qualified purchasers to buy such properties;

(2) A real estate broker indicating that a market exists for the proposed building and that it will be compatible with its neighborhood; and

(3) An architect, appraiser or engineer agreeing to make inspections and certifications to support interim disbursements.

(b) The Borrower may substitute a letter from a Lender for one or more of the letters.

§ 120.394 What are the eligible uses of proceeds?

A Borrower must use the loan proceeds solely to acquire, construct or substantially rehabilitate an individual residential or commercial building for sale. ''Substantial'' means rehabilitation expenses of more than one-third of the purchase price or fair market value at the time of the application. A Borrower may use up to 20 percent of the proceeds to acquire land, and up to 5 percent for community improvements such as curbs and sidewalks.

§ 120.395 What is SBA's collateral position?

SBA will require a lien on the building which must be in no less than a second position.

§ 120.396 What is the term of the loan?

The loan must not exceed thirty-six months plus the estimated time to complete construction or rehabilitation.

§ 120.397 Are there any special restrictions?

The borrower must not use loan proceeds to purchase vacant land for possible future construction or to operate or hold rental property for future rehabilitation. SBA may allow rental of the property only if the rental will improve the ability to sell the property. The sale must be a legitimate change of ownership.

Subpart D—Lenders

§ 120.400 Participation agreements.

SBA may enter into participation agreements with Lenders to make deferred participation (guaranteed) loans. Participation agreements do not obligate SBA to participate in any specific proposed loan that a Lender may submit. The existence of a participation agreement does not limit SBA's rights to deny a specific loan or establish general policies.

Participation Criteria

§ 120.410 Requirements for all participating Lenders.

A Lender must:

(a) Have a continuing ability to evaluate, process, close, disburse, and service small business loans;

(b) Be open to the public for the making of such loans (not be a financing subsidiary, engaged primarily in financing the operations of an affiliate);

(c) Have continuing good character and reputation, and otherwise meet and maintain the ethical requirements of § 120.140; and

(d) Be supervised and examined by a State or Federal regulatory authority, satisfactory to SBA.

§ 120.411 Preferences.

No agreement to participate under the Act shall establish any Preferences in favor of the Lender.

§ 120.412 Other services Lenders may provide Borrowers.

Subject to the conflict of interest provision in subpart A of this part, Lenders, their Associates or the designees of either may provide services to and contract for goods with a Borrower only after full disbursement of the loan to the small business or to an account not controlled by the Lender, its Associate, or the designee. A Lender, an Associate, or a designee providing such services must do so under a written contract with the small business, based on time and hourly charges, and must maintain time and billing records for examination by SBA. Charges made cannot exceed those charged by established professional consultants providing similar services.

§ 120.413 Advertisement of relationship with SBA.

A Lender may refer in its advertising to its participation with SBA. The advertising may not:

(a) State or imply that the Lender, or any of its Borrowers, has or will receive preferential treatment from SBA;

(b) Be false or misleading; or

(c) Make use of SBA's seal.

Pledging Notes or Transferring Unguaranteed Portion

§ 120.420 Financings by Nondepository Lenders.

(a) A Small Business Lending Company regulated by SBA or a Business and Industrial Development Company (''Nondepository Lender'') may pledge the notes evidencing SBA guaranteed loans or sell the unguaranteed portions of such loans if SBA, in its sole discretion, gives its prior written consent. The Lender must be secure financially and have a history of compliance with SBA's regulations and any other applicable state or Federal statutory and regulatory requirements.

(b) The Nondepository Lender, SBA, and any third party involved in the transaction, as determined by SBA in its sole discretion, must enter into a written agreement satisfactory to SBA acknowledging SBA's interest as guarantor of the subject loans and accepting that all relevant third parties agree to recognize and uphold those interests under the Act, this part, and the contractual provisions of SBA's blanket Guarantee Agreement. In any such agreement, the parties must agree to the following conditions:

(1) The Nondepository Lender, SBA, or a third party custodian agreeable to SBA, will hold all pertinent Loan Instruments, and the Nondepository Lender will continue to service the loans after the pledge or transfer is made;

(2) The Nondepository Lender must continue to retain an economic risk in and bear the ultimate risk of loss on the unguaranteed portions. The Nondepository Lender must demonstrate to SBA's satisfaction and in SBA's sole discretion the retention of economic risk by:

(i) In the case of the sale of unguaranteed portions:

(A) Establishing a sufficient reserve fund at time of sale;

(B) Retaining a sufficient level of insurance; and/or

(C) Agreeing to reacquire the unguaranteed portion of a guaranteed loan or the note evidencing a guaranteed loan if the loan goes into default; or

(ii) In the case of the pledge of notes, retaining all of the economic interest in the unguaranteed portion of any loans which the notes evidence.

(c) The Nondepository Lender may not use SBA guaranteed loans or the collateral supporting such loans as collateral for the borrowing of any related enterprise or for any other purpose inconsistent with this part.

Miscellaneous Provisions

§ 120.430 SBA access to Lender files.

A Lender must allow SBA's authorized representatives, during normal business hours, access to its files to review, inspect and copy all records and documents relating to SBA guaranteed loans.

§ 120.431 Suspension and revocation of eligibility to participate.

SBA may suspend or revoke the eligibility of a Lender to participate in the 7(a) program because of a violation of SBA regulations, a breach of any agreement with SBA, a change of circumstance resulting in the Lender's inability to meet operational requirements, or a failure to engage in prudent lending practices. Proceedings for such purposes will be conducted in accordance with the provisions of part 134 of this chapter. A suspension or revocation will not invalidate a guarantee previously provided by SBA.

Certified Lenders Program (CLP)

§ 120.440 What is the Certified Lenders Program?

Under the Certified Lenders Program (CLP), designated Lenders process, close, and service, and may liquidate, SBA guaranteed loans. SBA gives priority to applications and servicing actions submitted by Lenders under this program. All other rules in this part 120 relating to the operations of Lenders apply to CLP Lenders.

§ 120.441 How does a Lender become a CLP Lender?

(a) An SBA field office may nominate a Lender or a Lender may request a field office to consider it for CLP status. SBA district directors may approve and renew a Lender's CLP status. The district director will consider whether the Lender:

(1) Has the ability to process, close, service and liquidate loans; and

(2) Has a satisfactory performance history with SBA, including the submission of complete and accurate loan guarantee application packages;

(3) Has an acceptable SBA purchase rate; and

(4) Has shown the ability to work well with the local SBA office.

(b) If the district director does not approve a request for CLP status, the Lender may appeal to the AA/FA, whose decision will be final. If SBA grants CLP status, it applies only in the field office that approved the CLP designation. A CLP Lender must execute a Supplemental Guarantee Agreement that will specify a term not to exceed two years.

§ 120.442 Suspension or revocation of CLP status.

The AA/FA may suspend or revoke CLP status upon written notice providing the reasons at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include a loan performance record unacceptable to SBA, failure to make the required number of loans under the expedited procedures,or violations of applicable statutes, regulations or published SBA policies and procedures. A CLP Lender may appeal the suspension or revocation made under this section under procedures found in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

Preferred Lenders Program (PLP)

§ 120.450 What is the Preferred Lenders Program?

Under the Preferred Lenders Program (PLP), designated Lenders process, close, service, and liquidate SBA guaranteed loans with reduced requirements for documentation to and prior approval by SBA.

§ 120.451 How does a Lender become a PLP Lender?

(a) An SBA field office serving the area where a CLP Lender's office is located can nominate a CLP Lender or a CLP Lender can request a field office to consider it for PLP status. The SBA field office will forward its recommendation to an SBA centralized loan processing center which will submit its recommendation and supporting documentation to the AA/FA for final decision.

(b) In making its decision, SBA will consider whether the CLP Lender:

(1) Has the required ability to process, close, service and liquidate loans; and

(2) Has the ability to develop and analyze complete loan packages; and

(3) Has a satisfactory performance history with SBA.

(c) If the Lender is approved, the AA/FA will designate the area in which it can make PLP loans.

(d) Before it can operate as a PLP Lender, the approved CLP Lender must execute a Supplemental Loan Guarantee Agreement, which will specify a term not to exceed two years.

(e) When a PLP's Supplemental Loan Guarantee Agreement expires, SBA may recertify it as a PLP Lender for an additional term not to exceed two years. Prior to recertification, SBA will review a PLP Lender's loans, policies and procedures. The recertification decision of the AA/FA is final.

(f) A PLP Lender may request an expansion of the territory in which it can process PLP loans by submitting its request to a loan processing center. The center shall obtain the recommendation of each SBA office in the area into which the PLP Lender would like to expand its PLP operations. The center shall forward the recommendations to the AA/FA for final decision. If a PLP Lender is not already a CLP Lender in a territory into which it seeks to expand its PLP status, it will automatically obtain CLP status in the territory without approval from the District Office when it is granted its extension of PLP status into that territory .

§ 120.452 What are the requirements of PLP loan processing?

(a) Subparts A and B of this part govern the making of PLP loans, except for the following:

(1) Certain types of businesses, loans, and loan programs are not eligible for PLP, as detailed in published SBA policy and procedures.

(2) A Lender may not use the PLP procedure to reduce its existing credit exposure for any Borrower.

(3) SBA will guarantee no more than the specified statutory percentage of any PLP loan. (b) A PLP Lender notifies SBA of its approval of a PLP loan by submitting to SBA's loan processing center appropriate documentation signed by two of the PLP's authorized representatives. SBA will attach the SBA guarantee and notify the PLP Lender of the SBA Loan Number (if it does not identify a problem with eligibility, and funds are available).

(c) The PLP Lender is responsible for the correctness of all PLP loan decisions regarding eligibility (including size), creditworthiness, loan closing, and compliance with all requirements of law or SBA regulations.

§ 120.453 What are the requirements of PLP loan servicing and liquidation?

The PLP Lender must service and liquidate its SBA guaranteed loan portfolio (including its non-PLP loans) using generally accepted commercial banking standards employed by prudent lenders. The PLP Lender must liquidate any defaulted SBA guaranteed loan in its portfolio unless SBA advises in writing that SBA will liquidate the loan. The PLP Lender must submit a liquidation plan to SBA prior to commencing liquidation action, if possible. The PLP Lender may take any necessary servicing action, or liquidation action consistent with a plan, for any SBA guaranteed loan in its portfolio, except it may not:

(a) Take any action that confers a Preference on the Lender;

(b) Accept a compromise settlement without prior written SBA consent; and

(c) Sell or pledge more than 90 percent of a PLP loan.

§ 120.454 PLP performance review.

SBA may review the performance of a PLP Lender. SBA may charge the PLP Lender a fee for this review.

§ 120.455 Suspension or revocation of PLP status.

The AA/FA may suspend or revoke PLP status upon written notice providing the reasons at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include loan performance unacceptable to SBA, failure to make the required number of loans under the expedited procedures, or violations of applicable statutes, regulations or published SBA policies and procedures. A PLP Lender may appeal the suspension or revocation made under this section under procedures found in Part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

Small Business Lending Companies (SBLC)

§ 120.470 What is an SBLC?

A Small Business Lending Company (SBLC) is a nondepository lending institution engaged solely in the making of loans under section 7(a) (except section 7(a)(13)) of the Act in participation with SBA. SBA supervises, examines, and regulates SBLCs. An SBLC is subject to all applicable SBA regulations, including those governing Lenders. This program has been closed to new licenses since January, l982. In addition to complying with § 120.400–120.413, an SBLC must meet the following requirements:

(a) *Business structure.* It must be a corporation (profit or non-profit).

(b) *Written agreement.* It must sign a written agreement with SBA with terms satisfactory to SBA.

(c) *Capital structure.* It must have unencumbered paid-in capital and paid-in surplus of at least $1,000,000, or ten percent of the aggregate of its share of all outstanding loans, whichever shall be more.

(d) *Capital impairment.* It must avoid capital impairment at all times. Impairment exists if the retained earnings deficit of an SBLC exceeds 50 percent of combined paid-in capital and paid-in-surplus, excluding treasury stock. An SBLC must give SBA prompt written notice of any capital impairment

within 30 calendar days of the month-end financial report that first reflects the impairment. Until the impairment is cured, an SBLC may not present any loans to SBA for guarantee.

(e) *Issuance of securities.* Without prior written SBA approval, it must not issue any securities (including stock options and debt securities) except stock dividends and common stock issued for cash or direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States.

(f) *Voluntary capital reduction.* Without prior written SBA approval, it must not voluntarily reduce its capital, or purchase and hold more than 2 percent of any class or combination of classes of its stock.

(g) *Reserves for losses.* It must maintain a reserve in the amount of anticipated losses on loans and receivables.

(h) *Internal control.* It must adopt a plan designed to safeguard its funds and other assets, to assure the reliability of its personnel, and to maintain the accuracy of its financial data.

(i) *Dual control.* It must maintain dual control over disbursement of funds and withdrawal of securities. An SBLC may disburse funds only by checks or wire transfers authorized by signatures of two or more officers covered by the SBLC's fidelity bond, except that checks in an amount of $1,000 or less may be signed by one bonded officer. There must be two or more bonded officers, or one bonded officer and a bonded employee to open safe deposit boxes or withdraw securities from safekeeping. The SBLC shall furnish to each depository bank, custodian, or entity providing safe deposit boxes a certified copy of the resolution implementing these control procedures.

(j) *Fidelity insurance.* It must maintain a Brokers Blanket Bond, Standard Form 14, or Finance Companies Blanket Bond, Standard Form 15, or such other form of coverage as SBA may approve, in a minimum amount of $25,000 executed by a surety holding a Certificate of authority from the Secretary of the Treasury pursuant to 6 U.S.C. 6–13.

(k) *Common control.* It must not control, be controlled by, or under common control with, another SBLC. Without prior written SBA approval, an Associate of one SBLC shall not be an Associate of another SBLC or of any entity which directly or indirectly controls or is under common control with another SBLC.

(l) *Management services.* An SBLC must employ full time professional management.

(m) *Borrowed funds.* Without SBA's prior written approval, it must not be capitalized with borrowed funds. Shareholders owning 10 percent or more of any class of its stock shall not use borrowed funds to purchase the stock unless the net worth of the shareholders is at least twice the amount borrowed or unless the shareholders receive SBA's prior written approval for a lower ratio.

§ 120.471 Records.

Each SBLC must comply with the following requirements concerning records:

(a) *Maintenance of Records.* It must maintain accurate and current financial records, including books of account, minutes of stockholder, directors, or executive committee meetings, and all documents and supporting materials relating to the SBLC's transactions at its principal business office. Securities held by a custodian pursuant to a written agreement shall be exempt from this requirement.

(b) *Preservation of records.*

(1) It must preserve in a manner permitting immediate retrieval the following documentation for the financial statements required by § 120.472 (and of the accompanying independent public accountant's opinion), for the following specified periods:

(i) Preserve permanently:

(A) All general and subsidiary ledgers (or other records) reflecting asset, liability, capital stock and surplus, income, and expense accounts;

(B) All general and special journals (or other records forming the basis for entries in such ledgers); and

(C) The corporate charter, bylaws, application for determination of eligibility to participate with SBA, and all minutes books, capital stock Certificates or stubs, stock ledgers, and stock transfer registers;

(ii) Preserve for at least 6 years following final disposition of the related loan:

(A) All applications for financing;

(B) Lending, participation, and escrow agreements;

(C) Financing instruments; and

(D) All other documents and supporting material relating to such loans, including correspondence.

(2) Records and other documents referred to in this section may be preserved electronically or by reproduction if the SBLC makes and stores duplicate originals separately from the original for the time required.

§ 120.472 Reports to SBA.

An SBLC must submit the following to the AA/FA:

(a) An audited financial statement prepared by an independent public accountant within three months after the close of each fiscal year, and interim financial reports when requested by SBA;

(b) A report of any legal or administrative proceeding, by or against the SBLC, or against an officer, director, or employee of the SBLC for an alleged breach of official duty, within 10 days after initiating or learning of the proceeding, as well as notification of the terms of any settlement or final judgment (in addition to any reporting under applicable SBA Forms);

(c) Copies of any report furnished to its stockholders (including any prospectus, letter, or other publication concerning the financial operations of the SBLC);

(d) A summary of any changes in the SBLC's organization or financing, such as:

(1) Any change in its name, address or telephone number;

(2) Any change in its charter, bylaws, or its officers or directors (to be accompanied by a statement of personal history on an approved SBA form);

(3) Any changes in capitalization not otherwise required by § 120.470 to be reported to SBA;

(4) Any changes affecting the eligibility of the SBLC to continue to participate as an SBLC; and

(5) Notice of a pledge of stock within 30 calendar days of the transaction if 10 percent or more of the stock is pledged by any person (or group of persons acting in concert) as collateral for indebtedness, and such pledge does not involve a transfer for which prior written approval of SBA is required under § 120.473; and

(e) Such other reports as SBA may require from time to time by written directive.

§ 120.473 Change of ownership or control.

(a) Any change of ownership or control without prior written approval of SBA is prohibited. An SBLC must request approval of any such change from the AA/FA. Pending the approval, the SBLC may not register the proposed new owners on its transfer books nor permit them to participate in any manner in the conduct of the SBLC's affairs. Change of ownership or control shall include:

(1) Any transfer of 10 percent or more of any class of the SBLC's stock, and any agreement providing for such transfer;

(2) Any transfer that could result in the beneficial ownership by any person or group of persons acting in concert of 10 percent or more of any class of its

stock, and any agreement providing for such transfer;

(3) Any merger, consolidation, or reorganization; or

(4) Any other transaction or agreement that transfers control of the SBLC.

(b) If transfer of ownership or control is subject to the approval of any State or Federal chartering, licensing, or other regulatory authority, copies of any documents filed with such authority shall, at the same time, be transmitted to the SBA District Office serving the area in which the SBLC's principal office is located.

§ 120.474 Prohibited financing.

An SBLC may not make a loan to a small business that has received financing (or a commitment for financing) from an SBIC that is an Associate of the SBLC.

§ 120.475 Suspension or revocation.

SBA may revoke or suspend an SBLC for a violation of law, these regulations, or any agreement with SBA. An appeal can be made following the procedures set forth in part 134 of this chapter.

Subpart E—Loan Administration

§ 120.500 General.

This subpart outlines the general loan administration policies applicable to SBA financial assistance.

Servicing

§ 120.510 Servicing direct and immediate participation loans.

SBA services the direct loans that it makes. Generally, the Lender services immediate participation loans that it makes and in which SBA participates.

§ 120.511 Servicing guaranteed loans.

The Lender services guaranteed loans, holds the Loan Instruments and receives the Borrower's payments of principal and interest.

§ 120.512 Who services the loan after SBA honors its guarantee?

Generally, after SBA honors its guarantee, the Lender must continue to hold the Loan Instruments and service the loan, and the Lender must execute a Certificate of interest showing SBA's percentage of the loan. If SBA elects to service the loan, the Lender must assign the Loan Instruments to SBA.

§ 120.513 What servicing actions require the prior written consent of the SBA?

SBA must give its prior written consent before the Lender takes any of the following actions:

(a) Alter substantially the terms or conditions of any Loan Instrument (for example, any increase in the principal amount or change in the interest rate, or conferring a Preference on the Lender);

(b) Release collateral having a cumulative value in excess of 20 percent of the original loan amount;

(c) Accelerate the maturity of the note;

(d) Sue upon any Loan Instrument;

(e) Compromise or waive any claim against any Borrower, guarantor, obligor or standby creditor arising out of any Loan Instrument; or

(f) Increase the amount of any prior lien held by the Lender on the collateral securing the loan.

SBA'S Purchase of a Guaranteed Portion

§ 120.520 When does SBA honor its guarantee?

(a) SBA, in its sole discretion, may purchase a guaranteed portion of a loan at any time. A Lender may demand in writing that SBA honor its guarantee if the Borrower is in default on any installment for more than 60 calendar days (or less if SBA agrees) and the default has not been cured. If a Borrower cures a default before a Lender requests purchase by SBA, the Lender's right to request purchase on that default lapses.

(b) When SBA purchases the guaranteed portion, it does not waive any of its rights to recover money paid on the guaranty, based upon the Lender's negligence, misconduct, or violation of this part, including the those actions listed in § 120.524(a), the guarantee agreement or the Loan Instruments.

§ 120.521 What interest rate applies after SBA purchases its guaranteed portion?

When SBA honors its guarantee for a fixed interest rate loan, the rate of interest remains as stated in the note. On loans with a fluctuating interest rate, the interest rate that the Borrower owes will be at the rate in effect at the time of the earliest uncured default (where a default has occurred), or the rate in effect at the time of purchase (where no default has occurred).

§ 120.522 How much accrued interest does SBA pay to the Lender or Registered Holder when SBA purchases the guaranteed portion?

(a) *Rate of interest.* If SBA purchases the guaranteed portion from a Lender or from a Registered Holder (if sold in the Secondary market), it will pay accrued interest at:

(1) The rate in the note if it is a fixed rate loan; or

(2) The rate in effect on the date of the earliest uncured default (if a default has occurred) or of SBA's purchase (if there has been no default).

(b) *Payment to Lender.* SBA calculates the accrued interest due a Lender from the date of the Borrower's earliest uncured default, but interest may not accrue for more than 120 days (plus any deferment period which SBA had approved). In addition, if a Lender requests SBA to purchase within 120 days of the earliest uncured default, SBA will pay accrued interest to the Lender for any SBA time spent in making payment in excess of 120 days, plus interest from the last paid-to date to the earliest uncured default date.

(c) *Payment to Registered Holder.* SBA will pay a Registered Holder all accrued interest up to the date of payment.

(d) *Extension of the 120 day period.* Before the 120 days expire, the SBA field office may extend the period if the Lender and SBA agree that the Borrower can cure the default within a reasonable and definite period of time or that the benefits from doing so otherwise will exceed the costs of SBA paying additional interest. If the 120 days have passed, only SBA's AA/FA or his designee can extend the period.

§ 120.523 What is the ''earliest uncured default''?

Default occurs when a Borrower violates any provision in the Loan Instruments. The default date is the date the violation occurred. The ''earliest uncured default'' is the earliest violation not yet cured. If the violation is the failure by a Borrower to pay a regular installment of principal and interest when due, payments made by the Borrower before a Lender makes its request to SBA to purchase are applied to the earliest uncured default. If the installment is paid in full, the earliest uncured default date will advance to the next unpaid installment date. If a Borrower makes any payment after a Lender makes its request to SBA to purchase, the earliest uncured default date does not change because the Lender has already exercised its right to request purchase.

§ 120.524 When is SBA released from liability on its guarantee?

(a) SBA is released from liability on a loan guarantee (in whole or in part, within SBA's exclusive discretion), if any of the events below occur:

(1) The Lender has failed to comply with any of the provisions of these regulations, the Loan Guarantee Agreement, or the Authorization;

(2) The Lender has failed to make, close, service, or liquidate a loan in a prudent manner;

(3) The Lender's improper action or inaction has placed SBA at risk;

(4) The Lender has failed to disclose a material fact to SBA regarding a guaranteed loan in a timely manner;

(5) The Lender has misrepresented a material fact to SBA regarding a guaranteed loan;

(6) SBA has received a written request from the Lender to terminate the guarantee;

(7) The Lender has not paid the guarantee fee within the period required under SBA rules and regulations;

(8) The Lender has failed to request that SBA purchase a guarantee within 120 days after maturity of the loan;

(9) The Lender has failed to use required SBA forms or exact electronic copies; or

(10) The Borrower has paid the loan in full.

(b) If SBA determines, after purchasing its guaranteed portion of a loan, that any of the events set forth in paragraph (a) of this section occurred in connection with that loan, SBA is entitled to recover any money paid on the guaranty plus interest from the Lender responsible for those events.

(c) If the Lender's loan documentation indicates that one or more of the events in paragraph (a) of this section may have occurred, SBA may undertake such investigation as it deems necessary to determine whether to honor or deny the guarantee, and may withhold a decision on whether to honor the guarantee until the completion of such investigation.

(d) Any information provided to SBA prior to Lender's request for SBA to honor its guarantee shall not prejudice SBA's right to deny liability for a guarantee if one or more of the events listed in paragraph (a) of this section occur.

(e) Unless SBA provides written notice to the contrary, the Lender remains responsible for all loan servicing and liquidation actions until SBA honors its guarantee in full.

Deferment, Extension of Maturity and Loan Moratorium

§ 120.530 Deferment of payment.

SBA may agree to defer payments for a stated period of time, and use such other methods as it considers necessary and appropriate to help in the successful establishment and operation of the Borrower. This policy applies to all business loan programs, including 504 loans.

§ 120.531 Extension of maturity.

SBA may agree to extend the maturity of a loan for up to 10 years beyond its original maturity if the extension will aid in the orderly repayment of the loan.

§ 120.532 What is a loan Moratorium?

SBA may assume a Borrower's obligation to repay principal and interest on a loan by agreeing to make the payments to the Participating Lender on behalf of the Borrower. This relief is called a ''Moratorium.''

§ 120.533 When will SBA grant a Moratorium?

SBA normally will grant a Moratorium if:

(a) Without it, the small business will become or remain insolvent;

(b) With it, the small business will become or remain viable;

(c) Alternative remedies, such as a deferment, are not available;

(d) The Lender has already granted deferments equal to at least six (6) monthly installments, and the Lender and SBA agree that the deferments have been beneficial;

(e) The Borrower, Lender, obligors, and guarantors execute a ''Moratorium Agreement'' giving SBA absolute discretion to discontinue making the payments at any time;

(f) The Borrower (and co-Borrowers) execute a demand note to repay SBA's Moratorium advances;

(g) All guarantors or other obligors of the guaranteed loan execute guarantee agreements and any other instruments required by SBA to protect its interests under the demand note;

(h) The Borrower and other obligors provide such security as SBA considers necessary or appropriate; and

(i) The collateral securing the demand note includes at least the collateral securing the guaranteed loan, and the collateral position for the demand note is subject only to the lien position on the guaranteed loan.

§ 120.534 How long can a Moratorium continue?

Generally, SBA will continue a Moratorium for six months, although SBA may authorize an initial Moratorium for up to one year. SBA may continue a Moratorium for additional periods (to a maximum total of five (5) years) only if the Borrower can demonstrate the eventual ability to repay from earnings the original note and the demand note.

§ 120.535 What are the repayment terms of a Moratorium?

(a) The interest rate for the demand note is the same as for the guaranteed loan. SBA advances to a Participating Lender during the Moratorium period accrue interest from the date of each disbursement.

(b) SBA has the right to demand payment at any time. If not previously demanded, payment in full will be due immediately after the Borrower has fully paid the guaranteed loan.

(c) SBA may demand payment in full under the demand note or SBA may accept a repayment schedule. If the loan has been paid, the frequency and amount of the repayments must be at least equal to the amount and frequency that were due under the loan.

(d) SBA will apply repayments first to accrued interest and then to principal.

(e) A loan may be extended beyond the statutory limit for a period of time corresponding to the time of the Moratorium.

Liquidation of Collateral

§ 120.540 What are SBA's policies concerning liquidation of collateral?

(a) *Liquidation policy.* SBA or the Lender may liquidate collateral securing a loan if there is no reasonable prospect that the Borrower or a guarantor (other than SBA) can repay the loan within a reasonable period.

(b) *Sale and conversion of loans.* Without the consent of the Borrower, SBA may:

(1) Sell a direct loan;

(2) Convert a guaranteed or immediate participation loan to a direct loan; or

(3) Convert an immediate participation loan to a guaranteed loan or a loan owned solely by the Lender.

(c) *Dispose of collateral and assets acquired through foreclosure or conveyance.* SBA or the Lender may sell real and personal property (including contracts and claims) pledged to secure a loan that is in default in accordance with the provisions of the related security instrument (see § 120.550 for Homestead Protection for Farmers).

(1) *Competitive bids or negotiated sale.* Generally, SBA or the Lender will offer loan collateral and acquired assets for public sale through competitive bids at an auction or a sealed bid sale, although a negotiated sale may be utilized under appropriate circumstances.

(2) *Lease of acquired property.* Normally, neither SBA nor a Lender will rent or lease acquired property or grant options to purchase. SBA will consider proposals for a lease if it appears a property cannot be sold advantageously and it is in the government's interest, but SBA may terminate the lease upon receipt of a favorable purchase offer.

(d) *Recoveries and security interests shared.* SBA and the Participating Lender will share pro rata (in accordance with their respective interests in a loan) all loan payments or recoveries, all reasonable expenses

(including advances for the care, preservation, and maintenance of collateral securing the loan), and any security interest or guarantee (excluding SBA's guarantee) which the Lender or SBA may hold or receive in connection with a loan.

(e) *Guarantors.* Guarantors of financial assistance have no rights of contribution against SBA on an SBA guaranteed or direct loan. SBA is not deemed to be a co-guarantor with any other guarantors.

Homestead Protection for Farmers

§ 120.550 What is homestead protection for farmers?

SBA may lease to a farmer-Borrower the farm residence occupied by the Borrower and a reasonable amount of adjoining property (no more than 10 acres and seven farm buildings), if they were acquired by SBA as a result of a defaulted farm loan made or guaranteed by SBA (see the Consolidated Farm and Rural Development Act, 7 U.S.C. 1921, for qualifying loan purposes).

§ 120.551 Who is eligible for homestead protection?

SBA must notify the Borrower in possession of the availability of these homestead protection rights within 30 days after SBA acquires the property. A farmer-Borrower must:

(a) Apply for the homestead occupancy to the SBA field office which serviced the loan within 90 days after SBA acquires the property;

(b) Provide evidence that the farm produces farm income reasonable for the area and economic conditions;

(c) Show that at least 60 percent of Borrower's gross annual income came from farm or ranch operations in at least any two out of the last six calendar years;

(d) Have resided on the property during the previous six years; and

(e) Be personally liable for the debt.

§ 120.552 Lease.

If approved, the applicant must personally occupy the residence during the term of the lease and pay a reasonable rent to SBA. The lease shall be for a period not to exceed 5 years, renewable for up to another 5 years. During or at the end of the lease period, the lessee has a right of first refusal to reacquire the homestead property under terms and conditions no less favorable than those offered to any other purchaser.

§ 120.553 Appeal.

If the application is denied, the Borrower may appeal the decision to the Regional Administrator in the region in which the field office which denied the application is located. Until the conclusion of any appeal, the Borrower may retain possession of the homestead property. If there is a conflict between state law and this section, state law prevails.

Subpart F—Secondary Market

§ 120.600 What is the SBA Secondary Market?

The SBA secondary market (''Secondary Market'') consists of the sale of Certificates, representing either the entire guaranteed portion of an individual 7(a) guaranteed loan or an undivided interest in a Pool consisting of the SBA guaranteed portions of a number of 7(a) guaranteed loans. By the terms of the Certificate, SBA guarantees a Registered Holder timely payment of principal and interest to which the Registered Holder is entitled from the loan or loans underlying the Certificate. Transactions involving interests in Pools or the sale of individual guaranteed portions are governed by the contracts entered into by the parties, SBA's Secondary Market Program Guide, and this subpart. See sections 5 (f), (g) and (h) of the Small Business Act (15 U.S.C. 634 (f), (g) and (h)).

§ 120.601 Definitions.

The definitions in this section apply throughout this subpart.

(a) *Certificate* is the document the FTA issues representing a beneficial fractional interest in a Pool (Pool Certificate), or an undivided interest in the entire guaranteed portion of an individual 7(a) guaranteed loan that is sold separately.

(b) *Current* means that no repayment from a Borrower to a Lender is over 29 days late measured from the due date of the payment on the records of the FTA's central registry (Pools) or the entity servicing the loan (individual guaranteed portion).

(c) *FTA* is the SBA's fiscal and transfer agent.

(d) *Note Rate* is the interest rate on the Borrower's note.

(e) *Net Rate* means the interest rate on an individual guaranteed portion in a Pool.

(f) *Payment date* is the date that the FTA deposits checks in the U.S. mail. SBA may change the date or method of payment by publishing a document in the Federal Register.

(g) *Pool* is an aggregation of SBA guaranteed portions of loans made by Lenders.

(h) *Pool Assembler* is a financial institution that:

(1) Organizes and packages a Pool by acquiring the SBA guaranteed portions of loans from Lenders;

(2) Resells fractional interests in the Pool to Registered Holders; and

(3) Directs the FTA to issue Certificates.

(i) *Pool Rate* means the interest rate on a Certificate.

(j) *Registered Holder* is the Certificate owner listed in FTA's records.

Certificates

§ 120.610 Description of Certificates.

(a) *General form and content.* Each Certificate must be registered with the FTA (no bearer Certificates). SBA must approve the terms of the Certificate.

(b) *Face amount of Pool Certificate.* The face amount of a Pool Certificate cannot be less than a specified minimum amount and must be in increments which SBA may specify (except for one Certificate in each Pool). SBA may change these requirements by issuing a document in the Federal Register after analyzing market conditions and program experience.

(c) *Payment Terms for Pool Certificates.* Principal installments and interest payments are based on the unpaid principal balance of the portion of the Pool represented by a Pool Certificate. All prepayments on loans in the Pool must be passed through to the Registered Holders on the payment date.

(d) *Payment Terms for Certificates which represent individual guaranteed portions.* Principal installments and interest payments are based on the unpaid principal balance of the entire SBA guaranteed portion of the loan. The Certificate must provide for a pro rata pass through to the Registered Holder of payments which the FTA receives from a Lender or any entity servicing the loan.

§ 120.611 Description of Pools backing Pool Certificates.

(a) *Pool characteristics.* (1) When the FTA issues a Pool Certificate, each Pool must have:

(i) A minimum number of guaranteed portions of loans;

(ii) A minimum aggregate principal balance of the guaranteed portions;

(iii) A maximum percentage of the Pool which an individual guaranteed portion may constitute;

(iv) A maximum allowable difference between the highest and lowest note interest rates;

(v) A maximum allowable difference between the remaining terms to maturity of the loans in the Pool; and

(vi) A minimum weighted average maturity at Pool formation.

(2) SBA may adjust the Pool characteristics periodically based upon

program experience and market conditions.

(b) *Interest rate on Pool Certificate.* The interest rate on a pool Certificate must be equal to the lowest net rate on any individual guaranteed portion in the pool.

(c) *Redemption of Certificate.* The FTA and SBA may redeem a pool Certificate because of prepayment or default of all loans constituting the pool.

§ 120.612 What loans are eligible to back Certificates?

(a) Pool Certificates are backed by the SBA guaranteed portions of loans comprising the Pool. An individual Certificate is backed by the entire SBA guaranteed portion of a single loan. Each such loan must:

(1) Be current as of the date the Pool is formed or the individual loan is initially sold in the Secondary Market;

(2) Be guaranteed under the Act; and

(3) Meet such other standards as SBA may determine to be necessary for the successful operation of the pooling program.

(b) With respect to any Pool, the loans must meet the SBA standards in effect at the time the Pool is formed.

§ 120.613 What is a Secondary Participation Guarantee Agreement?

When a Lender wants to sell the guaranteed portion of a loan, it enters into a Secondary Participation Guarantee Agreement (''SPGA'') with SBA and the purchaser of the guaranteed portion. The terms of sale between the Lender and the purchaser cannot require the Lender or SBA to repurchase except in accordance with the terms of the SPGA. Before execution of the agreement, the Lender must:

(a) *Documents.* Submit to SBA a copy of the SPGA, the note, and such other documents as SBA may require;

(b) *Full Disbursement.* Disburse to the Borrower the full amount of the loan; and

(c) *Guarantee Fees Paid.* Pay SBA all guarantee fees in full.

The SBA Guarantee of a Certificate

§ 120.620 The SBA guarantee of a Pool Certificate.

(a) *Extent of Guarantee.* SBA guarantees to a Registered Holder the timely payment of principal and interest installments and any prepayment or other recovery of principal on the underlying loans to which the Registered Holder is entitled. If the Borrower of a loan in a Pool backing the Certificates does not make a required installment payment, SBA through the FTA must make advances to maintain the schedule of interest and principal payments to the Registered Holders until SBA purchases the guaranteed portion.

(b) *SBA guarantee backed by full faith and credit.* SBA's guarantee of the Pool Certificate is backed by the full faith and credit of the United States.

§ 120.621 The SBA guarantee of a Certificate representing an individual guaranteed portion.

(a) *Extent of SBA guarantee.* With respect to individual SBA guaranteed portions sold in the Secondary Market, SBA guarantees to purchase from the Registered Holder the guaranteed portion for an amount equal to the unpaid principal and accrued interest due on the guaranteed portion of the note as of the date of SBA's purchase, less deductions for applicable fees. As opposed to the SBA guarantee with respect to pooled loans, SBA does not guarantee timely payment on individual guaranteed portions.

(b) *What triggers the SBA guarantee.* SBA's guarantee to the Registered Holder may be called upon when:

(1) The Borrower remains in uncured default for 60 days on payments of principal or interest due on the note;

(2) The Lender fails to send to the FTA payments it received from the Borrower; or

(3) The FTA fails to send to the Registered Holder any payments it has received from the Lender.

(c) *Full faith and credit.* SBA's guarantee to the Registered Holder is unconditional and is backed by the full faith and credit of the United States.

Pool Assemblers

§ 120.630 Qualifications to be a Pool Assembler.

(a) *Application to become Pool Assembler.* The application to become a Pool Assembler is available from the AA/FA. In order to qualify as a Pool Assembler, an entity must send the application to the AA/FA, with an application fee, and certify that it:

(1) Is regulated by the appropriate agency as defined in section 3(a)(34)(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(G));

(2) Meets all financial and other applicable requirements of its regulatory authority and the Government Securities Act of l986, as amended (Pub. L. 99–571, 100 Stat. 3208);

(3) Has the financial capability to assemble acceptable and eligible guaranteed loan portions in sufficient quantity to support the issuance of Pool Certificates; and

(4) Is in good standing with SBA (as the AA/FA determines), the Office of the Comptroller of the Currency (''OCC'') if it is a national bank, the Federal Deposit Insurance Corporation if it is not a national bank, or the National Association of Securities Dealers.

(b) *Approval by SBA.* After SBA approves the application to become a Pool Assembler, the entity may submit Pool applications to the FTA.

(c) *Conduct of business by Pool Assembler.* An entity continues to qualify as a Pool Assembler so long as it:

(1) Meets the eligibility standards in paragraph (a) of this section;

(2) Conducts its business in accordance with SBA regulations and accepted securities or banking industry practices, ethics, and standards; and

(3) Maintains its books and records in accordance with generally accepted accounting principles or in accordance with the guidelines of the regulatory body governing its activities.

§ 120.631 Suspension or termination of eligibility of Pool Assembler.

(a) *Suspension or termination.* The AA/FA may suspend a Pool Assembler from operating in the Secondary Market for up to 18 months or terminate its eligibility, if the Pool Assembler (and/or its Associates):

(1) Does not comply with any of the requirements in § 120.630(a) and (c);

(2) Has been indicted or otherwise formally charged with, or convicted of, a misdemeanor or felony;

(3) Has received an adverse final civil judgment that it has committed a breach of trust or a violation of a law or regulation protecting the integrity of business transactions or relationships;

(4) Has not formed a Pool for at least 3 years; or

(5) Is under investigation by its regulating authority for activities which may affect its ability to participate in the Secondary Market.

(b) *Suspension procedures.* The AA/FA shall notify a Pool Assembler by certified mail, return receipt requested, of the decision to suspend and the reasons therefore at least 10 business days prior to the effective date of the suspension. The Pool Assembler may appeal the suspension made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

(c) *Notice of termination.* In order to terminate a Pool Assembler's eligibility, the AA/FA must issue an order to show cause why the SBA should not terminate the Pool Assembler's participation in the Secondary Market. The Pool Assembler may appeal the termination made under this section

pursuant to procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

Sale of Certificates

§ 120.640 Administration of the Pool and individual guaranteed portions.

(a) *FTA responsibility.* The FTA has the responsibility to administer each Pool or individual guaranteed portion. It shall maintain a registry of Registered Holders and other information as SBA requires.

(b) *Self-liquidating.* Each Pool or individual guaranteed portion in the Secondary Market is self-liquidating because of Borrower payments or prepayments, redemption by SBA, and/or payments by SBA or the Lender after default by the Borrower. There is no substitution of the guaranteed portions of existing loans for defaulted loans.

(c) *SBA's right to subrogation.* If SBA pays a claim under a guarantee with respect to a Certificate issued under this subpart, it must be subrogated fully to the rights satisfied by such payment.

(d) *SBA ownership rights not limited.* No Federal, State or local law can preclude or limit the exercise by SBA of its ownership rights in the portions of loans constituting the Pool against which the Certificates are issued.

§ 120.641 Disclosure to purchasers.

(a) *Information to purchaser.* Prior to any sale, the Pool Assembler, Registered Holder of a Certificate representing an individual guaranteed portion, or any subsequent seller must disclose to the purchaser, either orally or in writing, information on the terms, conditions, and yield as described in the SBA Secondary Market Program Guide.

(b) *Information on transfer document.* The seller must provide the same information described in paragraph (a) of this section in writing on the transfer document when the seller submits it to the FTA. After the sale of an individual Certificate, the FTA will provide the disclosure information in writing to the purchaser.

(c) *Information in prospectus.* If the Registered Holder is a trust, investment Pool, mutual fund or other security, it must disclose the information in (a) above to investors through a prospectus and other promotional material if a Certificate or Pool Certificate is placed into or used as the backing for the investment vehicle.

§ 120.642 Requirements before the FTA issues Pool Certificates.

Before the FTA issues any Pool Certificate, the Pool Assembler must deliver to it the following documents:

(a) A properly completed Pool application form;

(b) Either:

(1) Certificates evidencing the guaranteed portions comprising the Pool; or

(2) An executed SPGA and related documentation for the loans whose guaranteed portions are to be part of the Pool; and

(c) Any other documentation which SBA may require.

§ 120.643 Requirements before the FTA issues the Certificate for an individual guaranteed portion.

(a) *FTA issuance of initial Certificate.* Before the FTA can issue the initial Certificate for a particular guaranteed portion, the original seller must provide the following documents to the FTA:

(1) An executed SPGA;

(2) A copy of the note representing the guaranteed loan; and

(3) Any other documentation which SBA may require.

(b) *Review of documentation.* SBA may review or require the FTA to review any documentation before the FTA issues a Certificate.

§ 120.644 Sale of individual SBA guaranteed portion.

(a) *Amount of Certificate.* Each Certificate which represents the guaranteed portion of a single loan must be for the entire amount of the guaranteed portion.

(b) *General rule on transferability of Certificate.* Each such Certificate is transferable only on the books and records of the FTA or SBA.

(c) *Lender cannot purchase guaranteed portion of loan it made.* The Lender (or its Associate) that made the loan cannot purchase the guaranteed portion in the Secondary Market. If a Lender does purchase the guaranteed portion of one of its own loans, it shall not have the unconditional guarantee of SBA.

(d) *Prepayment or default.* The prepayment of the underlying loan or a default on such loan will trigger the redemption of the Certificate by FTA/SBA in accordance with the procedures prescribed in the SPGA.

§ 120.645 Transfers of Certificates.

(a) *General rule.* Certificates are transferable. Transfers in the Secondary Market must comply with Article 8 of the Uniform Commercial Code of the State of New York. The seller must use the detached form of assignment (SBA Form 1088), unless the seller and purchaser choose to use another form which the SBA approves. The FTA may refuse to issue a Certificate until it is satisfied that the documents of transfer are complete.

(b) *Transfer on FTA records.* In order for the transfer of a Certificate to be effective the FTA or SBA must reflect it on their records.

(c) *Contents of letter of transmittal accompanying the transfer of Certificates.* (1) A letter of transmittal must accompany each Certificate which a Registered Holder submits to the FTA for transfer. The Registered Holder must supply the following information:

(i) Pool number, if applicable;

(ii) Certificate number;

(iii) Name of purchaser of Certificate;

(iv) Address and tax identification number of the purchaser;

(v) Name and telephone number of the person handling or facilitating the transfer;

(vi) Instructions for the delivery of the new Certificate.

(2) With this information, the seller of the Certificate must send the fee which the FTA charges for this service. The FTA will supply fee information to the seller.

Fiscal and Transfer Agent (FTA)

§ 120.650 Registration duties of FTA in Secondary Market.

The FTA registers all Certificates. This means it issues, transfers title to, and redeems them. All financial transactions relating to a guaranteed portion of a loan flow through the FTA. The FTA must keep the central registry current, using the following information required for each registration:

(a) The Lender that made and sold the loan;

(b) The interest rate paid by the Borrower to the Lender (including whether the rate is fixed or variable);

(c) The Lender's servicing fee;

(d) The purchaser;

(e) The price paid by the purchaser;

(f) The interest rate paid on the Certificate or Pool Certificate;

(g) The fees which the FTA charges to register and issue Certificates; and

(h) Any other information which SBA requires.

§ 120.651 Claim to FTA by Registered Holder to replace Certificate.

(a) To replace a Certificate because of loss, theft, destruction, mutilation, or defacement, the Registered Holder must:

(1) Give the FTA information about the Certificate and the facts relating to the claim;

(2) File an indemnity bond acceptable to SBA and the FTA with a surety to protect the interests of SBA and the FTA;

(3) Pay the FTA its fee to replace a Certificate; and

(4) Use an affidavit of loss (form available from the FTA) to report:

(i) The name and address of the Registered Holder (and the name and capacity of any representative actually filing the claim);

(ii) The Certificate by Pool number, if applicable;

(iii) The Certificate number;

(iv) The original principal amount;

(v) The name in which the Certificate was registered;

(vi) Any assignment, endorsement or other writing on the Certificate; and

(vii) A statement of the circumstances of the theft or loss.

(b) When the FTA receives notice of the theft or loss, it will stop any transfer of the Certificate. The Registered Holder must send to the FTA all available portions of a mutilated or defaced Certificate. When the Registered Holder completes these steps, the FTA will replace the Certificate.

§ 120.652 FTA fees.

The FTA may charge reasonable servicing fees, transfer fees, and other fees as the SBA and FTA may negotiate under contract.

Suspension or Revocation of Participant in Secondary Market

§ 120.660 Suspension or revocation.

(a) *Suspension or revocation of Lender, broker, dealer, or Registered Holder for violation of Secondary Market rules and regulations.* The AA/FA may suspend or revoke the privilege of a Lender, broker, dealer, or Registered Holder to sell, purchase, broker, or deal in loans or Certificates for:

(1) Committing a serious violation, in SBA's discretion, of:

(i) The rules and regulations of the Secondary Market; or

(ii) Any provisions in the contracts entered into by the parties, including SBA Forms 1085, 1086, 1088 and 1454; or

(2) Knowingly submitting false or fraudulent information to the SBA or FTA.

(b) *Additional rules for suspension or revocation of broker or dealer.* In addition to acting under paragraph (a) of this section, the AA/FA may suspend or revoke any broker or dealer from selling or otherwise dealing in Certificates in the Secondary Market if:

(1) Its supervisory agency has revoked or suspended the broker or dealer from engaging in the securities business, or is investigating the firm or broker for a practice which SBA considers, in its sole discretion, to be relevant to the broker's or dealer's fitness to participate in the Secondary Market;

(2) The broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony which bears on its fitness to participate in the Secondary Market; or

(3) A final civil judgment is entered holding that the broker or dealer has committed a breach of trust or a violation of any law or regulation protecting the integrity of business transactions or relationships.

(c) *Notice to suspend or revoke.* The AA/FA shall notify the affected party in writing, providing the reasons therefore, at least 10 business days prior to the effective date of the suspension or revocation. The affected party may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal. Revocation shall last a minimum of 5 years.

Subpart G—Microloan Demonstration Program

§ 120.700 What is the Microloan Program?

(a) The Microloan Demonstration Program assists women, low income individuals, minority entrepreneurs, and other small businesses (''Microloan Borrowers'') who need smaller amounts of financial assistance, but still have limited access to credit. The program has been authorized through September 30, 1997.

(b) Under this program, SBA makes direct and guaranteed loans to Intermediaries (as defined below) who use the proceeds to make loans to Microloan Borrowers. SBA also may make grants to these Intermediaries to be used for marketing, management, and technical assistance to the Microloan Borrowers.

(c) SBA also may make grants to qualified non-profit entities, who are not Intermediaries, to provide marketing, management and technical assistance to Microloan Borrowers seeking to start or enlarge small businesses.

(d) An Intermediary cannot operate in more than one state unless the AA/FA determines that it would be in the best interests of the small business community to operate across state lines.

§ 120.701 Definitions.

(a) *Deposit account* is a demand, time, savings, passbook, or similar account maintained with an insured depository institution (not including an account evidenced by a Certificate of Deposit).

(b) *Economically Distressed Area* is a county or equivalent division of local government of a state in which, according to the most recent available data from the United States Bureau of the Census, 40 percent or more of the residents have an annual income that is at or below the poverty level.

(c) *Grant* is a Federal award of money, or property in lieu of money (including cooperative agreements) to an eligible grantee that must account for its use. The term does not include the provision of technical assistance, revenue sharing, loans, loan guarantees, interest subsidies, insurance, direct appropriations, or any fellowship or other lump sum award.

(d) *Insured depository institution* has the same meaning as in section 3(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c).

(e) *Intermediary* is an entity participating in the Microloan Demonstration Program which has made and serviced microloans to small businesses for at least one year, and which provides marketing, management, and technical assistance to its Microloan Borrowers. It may be:

(1) A private, nonprofit community development corporation or other entity;

(2) A consortium of private, nonprofit community development corporations or other entities;

(3) A quasi-governmental economic development entity, other than a State, county, municipal government or any agency thereof; or

(4) An agency of or a non-profit entity established by a Native American Tribal Government.

(f) *Microloan* is a short-term, fixed interest rate loan of not more than $25,000 made by an Intermediary to an eligible small business.

(g) *Non-Federal sources* are funds acquired from sources other than the Federal Government and may include indirect costs or in-kind contributions paid for under non-Federal programs.

(h) *Specialized Intermediary* means an Intermediary which maintains a portfolio of microloans averaging $7,500 or less.

§ 120.702 Are there limits on Intermediaries or loans?

(a) SBA will not allow a quasi-governmental Intermediary to participate in the program unless:

(1) No otherwise eligible organization applies; or

(2) SBA determines that participation by a quasi-governmental Intermediary is in the public interest.

(b) In selecting Intermediaries, SBA will give priority to Specialized Intermediaries.

(c) SBA will not loan more than $2.5 million collectively per year to the

Intermediaries operating in any one State.

§ 120.703 How do I apply to become an Intermediary?

(a) *Application Process.* SBA periodically will solicit applications from prospective Intermediaries in a Program Announcement or Request For Proposal informing you:

(1) Where to obtain an application package;

(2) The deadline for submitting your application;

(3) Where to deliver your completed application.

(b) *Documentation in support of your application.* Your application must include a detailed narrative statement describing:

(1) The types of businesses which you have assisted in the past and those you intend to assist with Microloans;

(2) The average size of the loans which you have made in the past and the average size of your intended Microloans;

(3) The extent to which you will make loans to small businesses in rural areas;

(4) The geographic area in which you intend to operate, including a description of the economic and demographic conditions existing in your intended area of operations;

(5) The availability and cost of obtaining credit for small businesses in your area;

(6) Your experience and qualifications in providing marketing, management, and technical assistance to small businesses;

(7) Any plan you may have to use other technical assistance (such as counselors from the Service Corps of Retired Executives) to help your microloan borrowers.

(c) *Evaluation.* In evaluating applications to become Intermediaries, SBA shall select applicants that ensure the appropriate availability of Microloans for small businesses in all industry and business sectors located in both rural and urban areas.

§ 120.704 What is my financial contribution?

You must contribute from non-Federal sources an amount equal to 15% of any loan that you receive from SBA. The contribution may not be borrowed.

§ 120.705 Microloan Revolving Fund.

You must establish a Microloan Revolving Fund (''MRF'') in an interest-bearing Deposit Account into which you must deposit your contributions from non-Federal sources, the proceeds from SBA loans, and payments from your Microloan Borrowers. You may only withdraw from this account the money needed to establish the Loan Loss Reserve Fund (§ 120.706), proceeds for each Microloan you make, and any payments which you owe to SBA.

§ 120.706 Loan Loss Reserve Fund.

(a) *General.* You must establish a Loan Loss Reserve Fund (''LLRF'') in an interest-bearing Deposit Account. The purpose of the LLRF is to account for any shortage in the MRF caused by delinquencies or losses on your microloans. You must maintain the LLRF until you have repaid all obligations which you owe to SBA.

(b) *Level of Loan Loss Reserve Fund in first year.* In your first year as an Intermediary, the balance on deposit in the LLRF must equal not less than 15% of the total outstanding balance of all notes receivable owed by your Microloan Borrowers.

(c) *Level of Loan Loss Reserve Fund in subsequent years.* In subsequent years as an Intermediary, you must maintain a balance on deposit in the LLRF at a level which reflects your loss experience as determined by SBA. The maximum amount is 15% of the total outstanding balance owed by your Microloan Borrowers.

§ 120.707 What are the terms and conditions of my Intermediary SBA loan?

(a) *Loan Amount.* You, together with your affiliates, cannot borrow more than $750,000 in the first year of your participation in this program. In subsequent years, your obligations owed to SBA cannot exceed an aggregate of $2,500,000.

(b) *Repayment terms.* During the first year of your loan, you do not have to make any payments, but interest accrues from the date that SBA disburses the loan proceeds to you. After that, SBA will determine your periodic payments. The loan must be repaid within 10 years.

(c) *Interest rate.* If you are a Specialized Intermediary, your interest rate is equal to the rate applicable to 5-year obligations of the United States Treasury, adjusted to the nearest one-eighth percent, less 2 percent; otherwise, your interest rate is equal to the rate applicable to 5-year obligations of the United States Treasury, adjusted to the nearest one-eighth percent, less 1.25 percent.

(1) In determining the applicable interest rate, SBA will measure the average size of the microloans for each of your sites or offices. For purposes of this section, the terms ''office'' or ''site'' shall mean a fixed, existing, geographic location established at a specific address.

(2) At the end of your first year of participation in this program, SBA determines whether your actual lending practices qualify you as a Specialized Intermediary. SBA then applies the applicable interest rate retroactively (making adjustments to interest accrued on your loan).

(3) On the anniversary date of the first year interest rate calculation (second and all later years), SBA will determine whether your cumulative actual lending practices qualify you as a Specialized Intermediary. SBA will apply the applicable rate for that year.

(d) *Collateral.* As security for repayment of your SBA loan, you must pledge to SBA a first lien position in your MRF, LLRF, and all notes receivable from your Microloans.

(e) *Default.* If for any reason you are unable to pay SBA when due, SBA may accelerate maturity of your loan and demand payment in full. In this event, or if you violate this part or the terms of your loan agreement, you must surrender possession of all collateral described in paragraph (d) of this section to SBA. You are not obligated to pay SBA any loss or deficiency which may remain after liquidation of the collateral unless the loss was caused by your fraud, negligence, violation of any of the ethical requirements of § 120.140, or violation of any other provision of this part.

(f) *Fees.* SBA does not charge you any fees for a loan under this program. You may, however, pay minimal closing costs to third parties, such as filing and recording fees.

§ 120.708 What conditions apply to my loans to Microloan Borrowers?

(a) *General.* You may make Microloans to any small business eligible to receive financial assistance under this Part. You may allow your Borrower to use loan proceeds only for working capital and acquisition of materials, supplies, furniture, fixtures, and equipment. You must exercise prudent lending practices because SBA will not review your Microloans for creditworthiness.

(b) *Amount and maturity.* Generally, you should not loan more than $10,000 to any Borrower. You may loan more than $10,000 only if you are satisfied that your Borrower is unable to obtain financing on comparable terms elsewhere and has good prospects for success. You must not loan more than $25,000 to any Borrower, including affiliates. Each of your Microloans must be repaid within 6 years.

(c) *Interest rate.* (1) The maximum interest rate that you can charge your Microloan Borrowers is:

(i) On loans of more than $7,500, the interest rate charged on your SBA loan, plus 7.75 percentage points;

(ii) On loans of $7,500 or less, the interest rate charged on your SBA loan, plus 8.5 percentage points.

(2) Until the determination of your interest rate by SBA at the end of the first year, you should quote Microloan Borrowers two possible interest rates. You may collect interest at the higher rate. After your interest rate is established at the end of your first year, the actual interest rate for your borrowers' loans will be set and their interest payments during the first year adjusted.

§ 120.709 What records and reports does SBA require?

You must operate in accordance with applicable statutes, regulations, policy notices, SBA's Standard Operating Procedures (SOPs), and the information in your application. You must supply to SBA current and accurate information about all operational requirements, and maintain records as required by SBA.

§ 120.710 How does an Intermediary get a grant to assist Microloan Borrowers?

(a) *General.* If you receive a loan from SBA, you are eligible to receive a grant from SBA equal to 25 percent of the outstanding balance of all loans made to you by SBA. You must contribute, solely from non-Federal sources, an amount equal to 25 percent of the grant, unless you make at least 50 percent of your loans to small businesses located in or owned by residents of an Economically Distressed Area. If you make at least 25 percent of your loans to small businesses located in or owned by residents of an Economically Distressed Area, you will be eligible to receive an additional grant from SBA equal to 5 percent of the outstanding balance of all loans which you have received from SBA (with no obligation to contribute additional matching funds). You may not borrow your contribution. You may only use grant funds to provide your Microloan Borrowers with marketing, management, and technical assistance, except that you may use up to 15 percent of the grant funds to provide information and technical assistance to prospective Microloan Borrowers. You may not contract to have any other person or entity provide these services.

(b) *Specialized Intermediary.* If you are a Specialized Intermediary, you are eligible for an additional grant equal to 5 percent of the total outstanding balance of all loans which you have received from SBA. You are not required to contribute additional matching funds. You must use the grant proceeds only for marketing, management and technical assistance.

(c) *Determining eligibility.* SBA will determine your eligibility for a grant under this section separately for each loan-making office or site. SBA will measure the average size of your Microloans for each site to see if you qualify for the extra 5 percent.

§ 120.711 Does SBA provide technical assistance to Intermediaries?

SBA may procure technical assistance for an Intermediary to improve its knowledge, skill, and understanding of microlending by awarding a grant to a more experienced Intermediary. SBA may also obtain such assistance for prospective Intermediaries in areas of the country that are either underserved or not served by an existing Intermediary.

§ 120.712 How does a non-Intermediary get a grant?

(a) *Grant procedure for non-Intermediaries.* Any nonprofit entity that is not an Intermediary may apply to SBA for a grant. To qualify, it must submit information regarding its ability to provide marketing, management, and technical assistance to Microloan Borrowers. If approved, the grant agreement will establish the terms and conditions of the grant.

(b) *Number and amounts of grants.* In each year of the Microloan program, SBA may make no more than 25 grants to non-Intermediaries for terms of up to 5 years. A grant may not exceed $125,000.

(c) *Contribution by nonprofit entity.* The nonprofit entity must contribute an amount equal to 20 percent of the grant. The contribution from the nonprofit entity shall come solely from non-Federal sources, and may include direct costs or in-kind contributions paid for under non-Federal programs.

§ 120.713 Does SBA guarantee any loans an Intermediary obtains from another source?

(a) SBA may guarantee not less than 90 percent of no more than 10 loans by for-profit or non-profit entities (or an alliance of such entities) to intermediaries in urban areas and no more than 10 loans by such entities to intermediaries in Rural Areas.

(b) Any loan under this section shall have a term of 10 years. If you receive such a loan, you will not need to repay any principal or interest during the first year, although the interest will accrue. During the second through fifth years, you will pay interest only. During the sixth through tenth years you will pay interest and fully amortize the principal.

(c) The interest rate on any loan under this section shall be calculated as described in § 120.707.

Subpart H—Development Company Loan Program (504)

§ 120.800 What is the purpose of the 504 program?

As authorized by Congress, SBA has established this program to foster economic development, create or preserve job opportunities, and stimulate growth, expansion, and modernization of small businesses.

§ 120.801 How is a 504 Project financed?

A small business may apply for 504 financing through the CDC servicing the area in which the business is located. SBA issues an Authorization if it agrees to guarantee part of the funding for a Project. Usually, a Project requires interim (construction) financing from an interim lender (often the same lender that later provides a portion of the permanent financing). Generally, permanent financing of the Project consists of a private sector loan in the amount of 50 percent of the Project costs which is collateralized by a first lien on the Project Property, a loan made with the proceeds of a CDC Debenture in the amount of 40 percent of the Project costs, collateralized by a second lien on the Project Property, and a contribution by the small business in the amount of 10 percent of the Project costs. The Debenture is guaranteed 100 percent by SBA (with the full faith and credit of the United States), and sold to Underwriters who form Debenture Pools. Investors purchase interests in Debenture Pools and receive Certificates representing ownership of all or part of a Debenture Pool. SBA and CDCs use various agents to facilitate the sale and service of the Certificates and the orderly flow of funds among the parties.

§ 120.802 Definitions.

The following terms have the same meaning wherever they are used in this subpart. Defined terms are capitalized wherever they appear.

Area of Operations is a geographic area in which a CDC conducts its activities.

Associate Development Company (ADC) is an entity approved by SBA to assist CDCs to deliver 504 financing.

Central Servicing Agent (CSA) is an entity that receives and disburses funds among the various parties involved in 504 financing under a master servicing agent agreement with SBA.

Certificate is a document issued by SBA or its agent representing ownership of all or part of a Debenture Pool.

Debenture is an obligation issued by a CDC and guaranteed 100 percent by SBA, the proceeds of which are used to fund a 504 loan.

Debenture Pool is an aggregation of Debentures formed by an Underwriter.

Job Opportunity is a full time (or equivalent) permanent job created within two years of receipt of 504 funds, or retained in the community because of a 504 loan.

Net Debenture Proceeds are the portion of Debenture proceeds that finance eligible Project costs (excluding administrative costs).

Project is the purchase or lease, and/or improvement or renovation of long-term fixed assets by a small business, with 504 financing, for use in its business operations.

Project Property is one or more long-term fixed assets, such as land, buildings, machinery, and equipment, acquired or improved by a small business, with 504 financing, for use in its business operations.

Substantial Increase in Unemployment is:

(1) A reduction of one-third or more in the workforce of a relocating small business; or

(2) An increase in unemployment in a redevelopment area (as designated by the Department of Commerce), a Labor Surplus Area (designated by the Department of Labor), or in an area which has an unemployment rate at least 20 percent higher than the national average.

Third Party Loan is a loan from a commercial or private lender, investor, or Federal (non-SBA), State or local government source obtained by the Borrower as part of the Project financing.

Underwriter is an entity approved by SBA to form Debenture Pools and arrange for the sale of Certificates.

Certificaiton Procedures To Become a CDC

§ 120.810 Applications for certification as a CDC.

(a) Applicants for certification as a CDC must apply to the SBA District Office serving a proposed Area of Operations. An applicant must demonstrate that it satisfies the certification and operating criteria in §§ 120.820–120.829, as well as:

(1) The need for 504 services (if there is already a CDC in the Area of Operations, the applicant must justify the need for another and present a plan to avoid duplication or overlap);

(2) A budget, approved by its Board of Directors; and

(3) A plan to meet CDC operating requirements (without specializing in a particular industry).

(b) The AA/FA, with the recommendation of each District Office in the applicant's proposed Area of Operations, shall make the certification decision.

§ 120.811 Public notice of CDC certification application.

(a) As part of the application process, the applicant must publish a notice in a general circulation newspaper in the proposed Area of Operations, including the name and location of the proposed CDC, its purpose and Area of Operations, and the names of its officers and directors. The applicant shall send a copy of the notice to SBA. The notice shall provide the public at least 30 days to submit written comments to the District Office. The SBA shall consider the comments in making its decision on the application.

(b) CDCs serving the proposed Area of Operations shall be directly notified and given at least 30 days to comment.

§ 120.812 Probationary period for newly certified CDCs.

(a) Newly certified CDCs will be on probation for a period of two years, at the end of which the CDC must petition for:

(1) Permanent CDC status;

(2) A single, one-year extension of probation; or

(3) ADC status.

(b) SBA shall consider failure to file a petition before the end of the probationary period as a withdrawal from the 504 program. If the CDC elects ADC status or withdrawal, it must transfer all funded and/or approved loans to another CDC, SBA, or another servicer approved by SBA.

Requirements for CDC Certification and Operation

§ 120.820 CDC non-profit status.

A CDC must be a non-profit corporation (or limited liability company) in good standing. (For-profit CDCs certified by SBA prior to January 1, 1987 may retain their certifications.) An SBIC may not become a CDC.

§ 120.821 CDC Area of Operations.

A CDC must have a designated Area of Operations, specified by the CDC and approved by SBA. There can be only one statewide CDC in each state, which must foster economic development throughout the state and provide 504 assistance to areas not adequately served by other CDCs.

§ 120.822 CDC membership.

A CDC must have at least 25 members (or stockholders for for-profit CDCs approved prior to January 1, 1987). No person or entity may own or control more than 10 percent of the CDC's voting membership (or stock). Members must be representative of and provide evidence of active support in the Area of Operations. Members must be from each of the following groups:

(a) Government organizations responsible for economic development in the Area of Operations and acceptable to SBA;

(b) Financial institutions that provide commercial long-term fixed asset financing in the Area of Operations;

(c) Community organizations dedicated to economic development in the Area of Operations such as chambers of commerce, foundations, trade associations, colleges, or universities; and

(d) Businesses in the Area of Operations.

§ 120.823 CDC board of directors.

The CDC must have a Board of Directors chosen from the membership by the members, and representing at least three of the four membership groups. No single group shall control. The Board members must be responsible officials of the organizations they represent, and at least one must possess commercial lending experience. The Board must meet at least quarterly and shall be responsible for CDC staff decisions and actions. A quorum shall require at least 5 Directors. If there is a vote on loan approval or servicing actions, at least one Board member with commercial loan experience approved by SBA must be present and vote. As an alternative, the Board may obtain the recommendation of another person approved by SBA and possessing commercial lending experience.

§ 120.824 Professional management and staff.

A CDC must have full-time professional management, including an Executive Director (or the equivalent) managing daily operations. It must also have a full-time professional staff qualified by training and experience to market the 504 Program, package and process loan applications, close loans, service the loan portfolio, and sustain a sufficient level of service and activity in the Area of Operations.

(a) *Contracting out to third parties.* CDCs may obtain, under contract, marketing, packaging, processing, and servicing services from qualified Service Providers located in the Area of Operations, subject to SBA's prior

written approval. CDCs may contract for outside legal and accounting services without SBA approval. Compensation under all such contracts must be reasonable and customary for similar services in the Area of Operations. SBA may audit the contracts.

(b) *Contracting out to other CDCs.* CDCs may contract with other CDCs for specific services, subject to SBA's prior written approval.

§ 120.825 Financial ability to operate.

A CDC must be able to sustain its operations continuously, with reliable sources of funds (such as income from services rendered and contributions from government or other sponsors).

§ 120.826 Basic requirements for operating a CDC.

A CDC must operate in accordance with applicable statutes, regulations, policy notices, SBA's Standard Operating Procedures (SOPs), and the information in its application. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain the records and submit the reports required by SBA.

§ 120.827 Services a CDC provides to small businesses.

(a) A CDC must operate in and adequately service its Area of Operations. It must market the 504 program, package and process 504 loan applications, and close and service 504 loans. A CDC's loan portfolio must be diversified by business sector.

(b) A CDC may help small businesses obtain financial and technical assistance from other sources, including preparing, closing, and servicing loans under contract with Lenders in SBA's 7(a) program.

(c) A CDC also may loan amounts to the Borrower equal to the value of all or part of the Borrower's contribution to a Project in the form of cash or land, including site improvements, previously acquired by the CDC.

§ 120.828 The minimum level of CDC lending activity.

Each full fiscal year, a CDC must provide at least the minimum number of 504 Loans set by SBA in an annual program announcement.

§ 120.829 The Job Opportunity average a CDC must maintain.

(a) A CDC's portfolio must reflect an average of one Job Opportunity per $35,000 of 504 loan funding. The AA/FA may permit a CDC to average up to one per $45,000 for good cause in:

(1) Alaska;

(2) Hawaii;

(3) Redevelopment areas as defined in 42 U.S.C. 3161;

(4) State designated urban jobs and enterprise zones;

(5) Empowerment Zones and Enterprise Communities; and

(6) Labor Surplus Areas listed in the Department of Labor's publication ''Area Trends''.

(b) A CDC must indicate in its annual report the Job Opportunities actually or estimated to be provided by each Project.

(c) If a CDC does not maintain the required average, it may retain its certification if it justifies to SBA's satisfaction its failure to do so in its annual report and shows how it intends to attain the required average.

§ 120.830 Reports a CDC must submit.

A CDC must submit the following reports to SBA:

(a) An annual report within 90 days after the end of the CDC's fiscal year, and such interim reports as SBA may require;

(b) Resumes for all new Associates and staff;

(c) Reports of involvement in any legal proceeding;

(d) Changes in organizational status;

(e) Changes in any condition that affects its eligibility to continue to participate in the 504 program; and

(f) Quarterly service reports on each loan in its portfolio which is 60 days or more past due (and interim reports upon request by SBA).

§ 120.831 Disclosure of referral fees or other payments by or to a CDC.

The CDC must disclose to SBA and the Borrower any referral fees, remuneration, or payment made by the CDC to or received by the CDC from the Lender or any other party to the 504 transaction.

Extending a CDC's Area of Operations

§ 120.835 Application to extend an Area of Operations.

SBA may expand a CDC's Area of Operations for good cause shown including a showing that the proposed Area of Operations is not being served adequately by the existing CDCs and that the expanding CDC is well-qualified to serve it. SBA shall not consider an Area of Operations adequately served if the existing CDCs in the Area of Operation have not averaged, over the last two fiscal years, sufficient loan approvals for the population in the CDC's Area of Operations, as set by SBA in an annual program announcement. The CDC must apply in writing to the SBA District Office serving the geographic area in which the CDC proposes to expand. The District Office shall submit its recommendation to the AA/FA for final decision.

§ 120.836 Public notice of application for extension.

SBA must notify all CDCs servicing the proposed area of expansion, allowing at least 30 days for comment. The CDC also must publish a notice in a general circulation newspaper in the proposed area of expansion, giving the public at least 30 days to comment.

§ 120.837 Expiration of existing, temporary expansions.

All existing, temporary expansions of Areas of Operation shall expire 6 months after the effective date of the final regulations, unless a CDC applies for permanent expansion before the expiration date.

§ 120.838 Case by case extensions.

(a) A CDC may apply to make an individual loan for a Project outside its Area of Operations in an area not adequately served by other CDCs to the District Office serving the area in which the Project will be located. The District Director may approve the request for good cause shown.

(b) A Borrower may request the services of a CDC not presently servicing its area by writing to the AA/FA.

Accredited Lenders Program (ALP)

§ 120.840 Accredited Lenders Program.

The SBA may designate a CDC as an Accredited Lender. SBA will provide an Accredited Lender with expedited loan processing or servicing action (within three days of receiving a completed application).

(a) *Applications.* CDCs may apply to the SBA field office with which it is most active. The SBA office will send its recommendation and the application to the AA/FA.

(b) *Eligibility.* SBA will consider the CDC's ability to work with the local SBA office and the quality of past performance.

(c) *Term of designation.* CDCs will be designated as ALPs for a two year period, and are eligible to renew the designation for additional two year periods.

(d) *Suspension and revocation.* The AA/FA may suspend or revoke ALP designation upon written notice stating the reasons therefore at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include loan performance unacceptable to SBA or violations of applicable statutes,

regulations or published SBA policies and procedures. An ALP may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

Premier Certified Lenders Program

§ 120.845 Premier Certified Lenders Program.

The SBA has established a pilot program to designate a number of CDCs as Premier Certified Lenders (''PCLPs''), which will be able to process, approve, close and service 504 loans.

(a) *Characteristics.* Loans processed through the PCL Program will be subject to the same provisions as other 504 loans, including final approval by SBA.

(b) *Applications.* A CDC may obtain information concerning this program from SBA's Office of Pilot Operations in Washington, D.C. A CDC may apply to the SBA field office with which it is most active. The SBA office will send the application with a recommendation to the AA/FA.

(c) *Eligibility.* SBA will consider the CDC's ability to work with the local SBA office and the quality of past performance.

(d) *Loss reserve.* A PCLP must establish a loss reserve, secured by its segregated assets in favor of SBA, in the amount of the PCLP's historic loss rate or 10 percent of its exposure under the PCLP program, whichever is greater. The PCLP must contribute to the loss reserve every time a Debenture is issued, in intervals set by SBA.

(e) *Review.* The SBA shall review a PCLP's financings at least annually.

(f) *Suspension and revocation.* The AA/FA may suspend or revoke PCLP designation upon written notice stating the reasons therefore at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include loan performance unacceptable to SBA, failure to meet loss reserve or eligibility criteria, or violations of applicable statutes, regulations or published SBA policies and procedures. A PCLP may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this title. The action of the AA/FA shall remain in effect pending resolution of the appeal.

(g) *Program period.* On October 1, 1997, the PCLP pilot program ends.

Associate Development Companies (ADCs)

§ 120.850 ADC functions.

(a) An ADC must support local economic development efforts. An ADC may package, close, and service loans for a CDC under a written contract approved by SBA. Such contracts must meet Service Provider criteria, and specify the rights and responsibilities of the parties (including payment terms). The CDC remains solely responsible to SBA for the processing, closing, and servicing of the loan. It may not charge the Borrower a higher fee because it is using the ADC's services.

(b) An ADC must operate in accordance with statutes, regulations, policy notices, SBA's Standard Operating Procedures (SOPs), and the information in its application. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain the records required by SBA.

§ 120.851 ADC eligibility and operating requirements.

(a) An ADC must demonstrate to SBA and maintain the following:

(1) Adequate management ability;

(2) A Board of Directors meeting at least quarterly and chosen from the membership by the members;

(3) A professional staff, including at least one qualified full-time professional with small business lending experience available during regular business hours; and

(4) A budget or financial statements showing the financial capability and funding to sustain continuing operations.

(b) An ADC may contract out for staff services only if SBA gives prior approval. The contract, subject to SBA audit, may not be self-serving, and compensation must be reasonable and customary.

§ 120.852 Suspension and revocation of ADCs.

SBA may require corrective action, or the AA/FA may suspend or revoke ADC status upon written notice stating the reasons therefore at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include violations of applicable statutes, regulations or published SBA policies and procedures. An ADC may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

Ethical Requirements

§ 120.855 CDC and ADC ethical requirements.

CDCs and ADCs and their Associates must act ethically and exhibit good character. They must meet all of the ethical requirements of § 120.140. In addition, they are subject to the following:

(a) Any benefit flowing to an Associate or the Associate's employer from the Associate's activities as an Associate shall be merely incidental (this requirement does not prevent an Associate or an Associate's employer from engaging in a business relationship with the CDC and/or the Borrower in the regular course of business, including providing interim financing or Third-Party loans); and

(b) Unless waived by SBA, an Associate may not be an officer, director, or manager of more than one CDC or ADC (except that the membership or Board of Directors of a broader-based CDC may include a member or director of a local CDC within its Area of Operations).

Project Economic Development Goals

§ 120.860 Required objectives.

A Project must achieve at least one of the economic development objectives set forth in § 120.861 or § 120.862.

§ 120.861 Job creation or retention.

A Project must create or retain one Job Opportunity for every $35,000 guaranteed by SBA.

§ 120.862 Other economic development objectives.

A Project that achieves any of the following community development or public policy goals is eligible if the CDC's overall portfolio of 504 loans, including the subject loan, meets or exceeds the CDC's required Job Opportunity average. Applications for assistance must indicate how the Project will meet the specified economic development objective.

(a) Community Development goals:

(1) Improving, diversifying or stabilizing the economy of the locality;

(2) Stimulating other business development;

(3) Bringing new income into the community; or

(4) Assisting manufacturing firms (Standard Industrial Classification Manual (SIC) Codes 20–49).

(b) Public Policy goals:

(1) Revitalizing a business district of a community with a written redevelopment plan;

(2) Expanding exports;

(3) Expanding Minority Enterprise development (See § 124.103(b) of this chapter.);

(4) Aiding rural development;

(5) Increasing productivity and competitiveness (retooling, robotics, modernization, competition with imports);

(6) Modernizing or upgrading facilities to meet health, safety, and environmental requirements;

(7) Assisting businesses affected by Federal budget reductions, such as base closings; or

(8) Assisting businesses in Labor Surplus Areas as defined by the Department of Labor.

Leasing Policies Specific to 504 Loans

§ 120.870 Leasing Project Property.

(a) A Borrower may use the proceeds of a 504 loan to acquire, construct, or modify buildings and improvements, and/or to purchase and install machinery and equipment located on land leased to the Borrower by the CDC or an unrelated lessor if:

(1) The remaining term of the lease, including options to renew, exercisable solely by the lessee, equals or exceeds the term of the Debenture, or, in the case of machinery or equipment, equals or exceeds the useful life of the property or the term of the Debenture, whichever is lesser;

(2) The Borrower assigns its interest in the lease to the CDC with right of reassignment to SBA; and

(3) The 504 loan is secured by a recorded lien against the leasehold estate and other collateral as necessary.

(b) If a CDC leases property to a small business, the rent paid by the small business during the term of the Debenture must be enough to pay principal and interest on all debt incurred by the CDC to finance the Project, and all related expenses. The rent also may include a reasonable return on the CDC's investment.

§ 120.871 Leasing part of a new construction Project to another business.

If a Project is the construction of a new building, a Borrower may lease up to 33% of the square footage of the rentable property (total square footage of all buildings or facilities used for business operations) for a short term to any third party if reasonable growth projections show that the Borrower will need additional space within three years and will use all of the additional space within ten years. If the Borrower is an Eligible Passive Company leasing 100 percent of the Project space to an Operating Company, the Operating Company may sublease up to 33 percent to a third party under the same conditions.

§ 120.872 Leasing part of an existing building to another business.

If a Project involves the acquisition, renovation, or reconstruction of an existing building, the Borrower (or Operating Company) must occupy at least 51 percent of the Rentable Property. The balance of the Rentable Property may be leased out to any third party, if the 504 loan proceeds were not used to remodel or convert the space to be leased out. The costs of interior finishing of the space to be leased out are not eligible Project costs, and third-party loan proceeds used to renovate the leased space shall not count towards the 504 first mortgage requirement or the Borrower's contribution.

Loan-Making Policies Specific to 504 Loans

§ 120.880 Basic eligibility requirements.

In addition to the eligibility requirements specified in subpart A, to be an eligible Borrower for a 504 loan, a small business must:

(a) Use the Project Property (except for loans to Passive Companies); and

(b) Together with its affiliates, meet one of the following size standards:

(1) It does not have a net worth in excess of $6 million, and does not have an average net income after Federal income taxes (excluding any carry-over losses) for the preceding two years in excess of $2 million; or

(2) It meets the size standards in Part 121 of this chapter for the industry in which it is primarily engaged.

§ 120.881 Ineligible Projects for 504 loans.

In addition to the ineligible businesses and uses of proceeds specified in subpart A of this part, the following Projects are ineligible for 504 financing:

(a) Relocation of any of the operations of a small business which will cause a Substantial Increase in Unemployment, unless the CDC can justify the loan because:

(1) The relocation is for key economic reasons and crucial to the continued existence, economic wellbeing, and/or competitiveness of the applicant; and

(2) The economic development benefits to the applicant and the receiving community outweigh the negative impact on the community from which the applicant is moving;

(b) Projects in foreign countries (loans financing real or personal property located outside the United States or its possessions); and

(c) Speculative Projects (such as oil wildcatting).

§ 120.882 Eligible Project costs for 504 loans.

Eligible Project costs which may be paid with the proceeds of 504 loans are:

(a) Costs directly attributable to the Project including expenditures incurred by the Borrower (with its own funds or from a loan):

(1) To acquire land used in the Project prior to applying to SBA for the 504 loan; or

(2) For any other expense toward a Project within six months of receipt by SBA of a complete loan application;

(b) In construction Projects, a contingency reserve for cost overruns not to exceed 10 percent of construction cost;

(c) Professional fees directly attributable and essential to the Project, such as title insurance, architecture, engineering, accounting, legal fees and environmental studies; and

(d) Repayment of interim financing including points, fees and interest.

§ 120.883 Eligible administrative costs for 504 loans.

The following costs and fees are not part of Project costs but may be paid with the proceeds of the 504 loan and the Debenture:

(a) SBA guarantee fee;

(b) Funding fee (to cover cost of public issuance of securities);

(c) CDC processing fee;

(d) Closing costs, including legal fees; and

(e) Underwriters fee.

§ 120.884 Ineligible costs for 504 loans.

Costs not directly attributable and necessary for the Project may not be paid with proceeds of the 504 loan. These include, but are not limited to, the following:

(a) Debt refinancing (other than interim financing);

(b) Third-Party Loan fees (commitment, broker, finders, origination, processing fees of permanent financing);

(c) Ancillary business expenses, such as:

(1) Working capital;

(2) Counseling or management services fees;

(3) Incorporation/organization costs;

(4) Franchise fees; and

(5) Advertising;

(d) Non fixed-asset project components, such as:

(1) Short-term equipment, furniture, and furnishings (unless essential to and a minor portion of the Project);

(2) Automobiles, trucks, and airplanes; and

(3) Construction equipment (except for heavy duty construction equipment integral to a business' operations and meeting the IRS definition of capital equipment).

Interim Financing

§ 120.890 Source of interim financing.

A Project may use interim financing for all Project costs except the

Borrower's contribution. Any source (including a CDC) may supply interim financing provided:

(a) The financing is not derived from any SBA program, directly or indirectly;

(b) The terms and conditions of the financing are acceptable to SBA;

(c) The source is not the Borrower or an Associate of the Borrower; and

(d) The source has the experience and qualifications to monitor properly all construction and progress payments. (If the source lacks such experience or qualifications, SBA may require the interim loan to be managed by a third party such as a bank or professional construction manager.)

§ 120.891 Certifications of disbursement and completion.

Before the Debenture is issued, the interim lender must certify that the interim financing has been disbursed in a manner consistent with the terms of the Authorization. Also, the CDC must certify that the Project was completed in accordance with the final plans and specifications (except as provided in § 120.962).

§ 120.892 Certifications of no adverse change.

Following completion of the Project, the following certifications must be made before the 504 loan closing:

(a) The interim lender must certify to the CDC that it has no knowledge of any adverse change in the condition of the small business since the application;

(b) The Borrower (or Operating Company) must certify to the CDC that there has been no adverse change in its financial condition or its ability to repay the 504 loan since the date of application, and must furnish interim financial statements, current within 90 days of closing; and

(c) The CDC must issue an opinion to the best of its knowledge that there has been no adverse change in the Borrower's (or Operating Company's) ability to repay the 504 loan since SBA's approval of the loan application.

Permanent Financing

§ 120.900 What are the sources of permanent financing?

Permanent financing for each Project must come from three sources: the Borrower's contribution, Third-Party Loans, and the 504 loan. Typically, the Borrower contributes 10 percent of the permanent financing, Third-Party Loans 50 percent and the 504 loan 40 percent.

The Borrower's Contribution

§ 120.910 How much must the Borrower contribute?

The Borrower must contribute to the Project cash (or property acceptable to SBA obtained with the cash) or land (that is part of the Project Property) valued at 10 percent or more of the Project cost (exclusive of administrative cost). The source of the contribution may be a CDC or any other source except an SBA business loan program (see § 120.913 for SBIC exception).

§ 120.911 Land contributions.

The Borrower's contribution may be land, including site improvements, previously acquired by the Borrower or the CDC. The amount of the contribution shall be the value of the contributor's equity in the land, excluding the value of any structures, under SBA's policy guidelines.

§ 120.912 Borrowed contributions.

The Borrower may borrow its cash contribution from the CDC or a third party. If any of the contribution is borrowed, the interest rate must be reasonable. If the loan is secured by any of the Project assets, the loan must be subordinate to the liens securing the 504 Loan, and the loan may not be repaid at a faster rate than the 504 Loan unless SBA gives prior written approval. A third party lender may not receive voting rights, stock options, or any other actual or potential voting interest in the small business.

§ 120.913 May an SBIC provide the contribution?

Subject to part 107 of this chapter, SBIC's may provide financing for all or part of the Borrower's contribution to the project. SBA shall consider SBIC funds to be derived from federal sources if the SBIC has leverage (as defined in part 107 of this chapter). If the SBIC does not have leverage, the investment will be considered to be from private funds. SBIC financing must be subordinated to the 504 loan and may not be repaid at a faster rate than the Debenture.

Third Party Loans

§ 120.920 The first lien position.

The Borrower must obtain one or more Third Party Loans totaling at least as much as the 504 loan. Third Party Loans usually have the first lien position. They cannot be guaranteed by SBA.

§ 120.921 Terms of Third Party loans.

(a) *Maturity.* A Third Party Loan must have a term of at least 7 years when the 504 loan is for a term of 10 years and 10 years when the 504 loan is for 20 years. If there is more than one Third Party Loan, an overall loan maturity must be calculated, taking into account the maturities and amounts of each loan. If there is a balloon payment, it must be justified in the loan report and clearly identified in the Loan Authorization.

(b) *Interest rates.* Interest rates must be reasonable. SBA must establish and publish in the Federal Register a maximum interest rate for any Third Party Loan from commercial financial institutions. The rate shall remain in effect until changed.

(c) *Other terms.* The Third Party Loan must not have any early call feature or contain any demand provisions unless the loan is in default. By participating, a Third Party Loan lender waives, as to the CDC/SBA financing, any provision in its deed of trust, or mortgage, or other documents prohibiting further encumbrances or subordinate debt. In the event of default, the Third Party Lender must give the CDC and SBA written notice of default within 30 days of the event of default and at least 60 days prior to foreclosure.

§ 120.922 Pre-existing debt on the Project Property.

In addition to its share of Project cost, a Third Party Loan may include consolidation of existing debt on the Project Property. The consolidation must not improve the lien position of the Lender on the pre-existing debt, unless the debt is a previous Third Party Loan.

§ 120.923 What are the policies on subordination?

(a) Financing provided by the seller of Project Property must be subordinate to the 504 loan. SBA may waive the subordination requirement if the property is classified as ''other real estate owned'' by a national bank or other Federally regulated lender and SBA considers the property to be of sufficient value to support the 504 loan.

(b) By participating, Third Party Loan lienholders subordinate to the CDC/SBA lien future advances in excess of the Third Party Loans except expenditures for collection, maintenance, and protection of the Third Party Loan lienholder's lien position.

(c) A Borrower is eligible for a 504 loan even if part of the Project financing is tax-exempt. SBA's lien position must not be subordinate to loans made from the proceeds of the tax-exempt obligation.

§ 120.924 Prepayment of subordinate financing.

The Borrower must not prepay any Project financing subordinate to the 504 loan without SBA's prior written consent.

§ 120.925 Preferences.

No Third Party Lender shall establish a Preference.

504 Loans and Debentures

§ 120.930 Amount.

(a) Generally, a 504 loan may not exceed 40 percent of total Project cost plus 100 percent of eligible administrative costs. For good cause shown, SBA may authorize an increase in the percentage of Project costs covered up to 50 percent. No more than 50 percent of eligible Project costs can be from Federal sources, whether received directly or indirectly through an intermediary.

(b) Generally, the minimum 504 loan must be $50,000, although, upon good cause shown, SBA may permit a 504 loan as small as $25,000. The amount of the Debenture must equal the amount of the 504 Loan. If the cost of the completed Project is less than 98 percent of the authorized Debenture amount, the amount of the Debenture to be issued shall be reduced by the difference. If the cost of the completed project is at least 98 percent of the authorized Debenture amount, the full authorized amount of the Debenture shall be disbursed.

§ 120.931 504 lending limits.

The outstanding balance of all SBA financial assistance to a Borrower and its affiliates under the 504 program covered by this Part must not exceed $750,000 ($1,000,000 if one or more of the public policy goals enumerated in § 120.861(b) applies to the Project).

§ 120.932 Interest rate.

The interest rate of the 504 Loan and the Debenture which funds it is set by the Underwriter and approved by the Secretary of the Treasury. Each 504 loan must have a fixed interest rate.

§ 120.933 Maturity.

The term of a 504 Loan and the Debenture which funds it shall be either 10 or 20 years.

§ 120.934 Collateral.

The CDC/SBA takes at least a second lien position on the Project collateral. In rare circumstances, collateral other than the Project collateral may be accepted by SBA. Sometimes secondary collateral is required. All collateral must be insured against such hazards and risks as SBA may require, with provisions for notice to SBA and the CDC in the event of impending lapse of coverage.

§ 120.935 Deposit.

At the time of application for a 504 loan, the CDC may require a deposit from the Borrower of $2,500 or 1 percent of the Net Debenture Proceeds, whichever is less. The deposit may be applied to the loan processing fee if the application is accepted, but must be refunded if the application is denied. If the small business withdraws its application, the CDC may deduct from the deposit reasonable costs incurred in packaging and processing the application.

§ 120.936 Subordination to CDC.

SBA, in its sole discretion, may permit subordination of the Debenture to any other obligation of the CDC, except debt incurred by the CDC to obtain funds to loan to the Borrower for the Borrower's required contribution to the Project financing.

§ 120.937 Assumption.

A 504 loan may be assumed with SBA's prior written approval.

§ 120.938 Default.

(a) Upon occurrence of an event of default specified in the 504 note which requires automatic acceleration, the note becomes due and payable. Upon occurrence of an event of default which does not require automatic acceleration, SBA may forbear acceleration of the note and attempt to resolve the default. If the default is not cured subsequently, the note shall be accelerated. In either case, upon acceleration of the note, the Debenture which funded it is also due immediately, and SBA must honor its guarantee of the Debenture. SBA shall not reimburse the investor for any premium paid.

(b) If a CDC defaults on a Debenture, SBA generally shall limit its recovery to the payments made by the small business to the CDC on the loan made from the Debenture proceeds, and the collateral securing the defaulted loan. However, SBA will look to the CDC for the entire amount of the Debenture in the case of fraud or negligence by the CDC.

§ 120.939 Borrower prohibition.

Neither a 504 loan recipient nor its Small Business Associate may purchase the Debenture that funded its 504 loan.

§ 120.940 Prepayment of the 504 loan or Debenture.

The Borrower may prepay its 504 loan, if it pays the entire principal balance, unpaid interest, any unpaid fees, and any prepayment premium established in the note. If the Borrower prepays, the CDC must prepay the corresponding Debenture with interest and premium. If one of the Debentures in a Debenture Pool is prepaid, Certificate holders must be paid pro rata, and SBA's guarantee on the entire Debenture Pool must be proportionately reduced. If the entire Debenture Pool is paid off, SBA may call all Certificates backed by the Pool for redemption.

§ 120.941 Certificates.

(a) The face value of a Certificates must be at least $25,000. Certificates are issued in registered form and transferred only by entry on the central registry maintained by the Trustee. No transfer may take place within 10 business days of a payment date. SBA guarantees the timely payment of principal and interest on the Certificates.

(b) Before the sale of a Certificate, the seller, or the broker or dealer acting as the seller's agent, must disclose to the purchaser the terms, conditions, yield, and premium and other characteristics not guaranteed by SBA.

Debenture Sales and Service Agents

§ 120.950 SBA and CDC must appoint agents.

SBA and the CDC must appoint the following agents to facilitate the sale and service of the Certificates and disbursement of the proceeds.

§ 120.951 Selling agent.

The CDC, with SBA approval, shall appoint a Selling Agent to select underwriters, negotiate the terms and conditions of Debenture offerings with the underwriters, and direct and coordinate Debenture sales.

§ 120.952 Fiscal agent.

SBA shall appoint a Fiscal Agent to assess the financial markets, minimize the cost of sales, arrange for the production of the Offering Circular, Debenture Certificates, and other required documents, and monitor the performance of the transfer agent and the underwriters.

§ 120.953 Trustee.

SBA must appoint a Trustee (known as a Transfer Agent for the December l986 Debenture sale) to:

(a) Issue Certificates;

(b) Transfer the Certificates upon resale in the secondary market;

(c) Maintain physical possession of the Debentures for SBA and the Certificate holders;

(d) Establish and maintain a central registry of:

(1) Debenture Pools, including the CDC obligors and the interest rate payable on the Debentures in each Pool;

(2) Certificates issued or transferred, including the Debenture Pool backing the Certificate, name and address of the purchaser, price paid, the interest rate on the Certificate, and fees or charges assessed by the transferror; and

(3) Brokers and dealers in Certificates, and the commissions, fees or discounts granted to the brokers and dealers;

(e) Receive semi-annual Debenture payments and prepayments;

(f) Make regularly scheduled and prepayment payments to Registered Holders of Debentures or Certificates; and

(g) Assure before any resale of a Debenture or Certificate is recorded in the registry that the seller has provided the purchaser a written disclosure statement approved by SBA.

§ 120.954 Central Servicing Agent.

(a) SBA has entered into a Master Servicing Agreement designating a Central Servicing Agent (CSA) to support the orderly flow of funds among Borrowers, investors, CDCs, and SBA. The CDC and Borrower must enter into an individual Servicing Agent Agreement with the CSA for each 504 loan, constituting acceptance by the CDC and the Borrower of the terms of the Master Servicing Agreement.

(b) The CSA has established a master reserve account. All funds related to the 504 loans and Debentures flow through the master reserve account under the provisions of the Master Servicing Agreement. The master reserve account shall be funded by a reserve deposit, a funding fee to be published from time to time in the Federal Register, and by principal and interest payments of 504 loans. At SBA's direction, the CSA uses the funds in the master reserve account to defray program expenses. In the event a Borrower defaults and the 504 note is accelerated, SBA shall add funds under its guarantee to ensure the full and timely payment of the Debenture which funded the 504 loan. The CSA shall pay to the CDC servicing each loan the interest accruing in the master reserve account on loan payments made by each Borrower between the date of receipt of each monthly payment and the date of disbursement to investors. The CSA may disburse such interest periodically to CDCs on a pro rata basis. SBA may use interest accruals in the account earned prior to October 1991 on such payments (not previously distributed to the CDCs) for 504 program administration.

§ 120.955 Agent bonds and records.

(a) Each agent (in §§ 120.951–120.955) must provide a fidelity bond or insurance in such amount as necessary to fully protect the interest of the government.

(b) SBA must have access at the agent's place of business to all books, records and other documents relating to Debenture activities.

§ 120.956 Suspension or revocation of brokers and dealers.

The AA/FA may suspend or revoke the privilege of any broker or dealer to participate in the sale or marketing of Debentures and Certificates for actions or conduct bearing negatively on the broker's fitness to participate in the securities market. SBA must give the broker or dealer written notice, stating the reasons therefore, at least 10 business days prior to the effective date of the suspension or revocation of ADC status. A broker or dealer may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal. SBA may suspend or revoke of the opportunity for a hearing under part 134 of this chapter.

Closings

§ 120.960 Responsibility for closing.

The CDC is responsible for the 504 Loan closing. The Debenture closing is the joint responsibility of the CDC and SBA.

§ 120.961 CDC closing fees.

(a) The CDC may charge the Borrower an amount sufficient to reimburse it for reasonable legal fees related to closing the 504 loan. The legal fees and other professional fees and closing costs are administrative costs eligible for reimbursement from the debenture proceeds.

(b) The CDC may charge a finder's fee of up to 1.5 percent of the 504 loan if the CDC secured the lender for the Borrower under a written contract. Either the Borrower or the lender may pay the fee. It may not be reimbursed from the Debenture proceeds.

§ 120.962 Construction escrow accounts.

The CSA, title company, or bank may hold Debenture proceeds in escrow to complete Project components such as landscaping and parking lots, and acquire machinery and equipment if the component or acquisition is a minor portion of the total Project and has been contracted for completion or delivery at a specified price and specific future date. The escrow agent must disburse funds upon approval by the CDC and the SBA, supported by invoices and payable jointly to the small business and the designated contractor.

Servicing and Post-Closing Fees

§ 120.970 Servicing of 504 loans and Debentures.

The CDC must service the 504 loan in accordance with the Loan Authorization, these regulations, SBA policies and procedures, and prudent lending standards until paid in full, including review of the small business's financial statements, tax filings, insurance, and security filings. CDCs must comply with the provisions of § 120.513. In addition, the CDC must comply with the servicing requirements set forth in SBA's SOP. The CDC must report promptly to SBA any adverse trend, condition or information. Upon request by a CDC, SBA may agree to defer a Borrower's monthly payment. SBA may negotiate agreements with CDCs to liquidate loans.

§ 120.971 Post-closing fees paid by Borrower.

(a) *CDC fees.* CDCs may charge the following fees to the Borrower:

(1) *Service fee.* A service charge of not less than 0.5 percent nor more than 2 percent per annum on the outstanding balance of the 504 loan measured at 5 year anniversary intervals. A service charge in excess of 1.5 percent in a Rural Area and 1 percent everywhere else requires SBA's prior written approval, based on evidence of substantial need. The CDC's monthly service fee shall be paid only from loan payments received. The fees may be accrued without interest and collected from the CSA when the payments are made;

(2) *Late fees.* Payments received after the 15th of each month may be subject to a late payment fee of 5 percent of the late payment or $100, whichever is greater, collected by the CSA on behalf of the CDC; and

(3) *Assumption fee.* Upon SBA's written approval, a CDC may charge an assumption fee equal to no more than 1 percent of the outstanding principal balance of the loan being assumed.

(b) *CSA fees.* The CSA may charge an initiation fee on each loan and a monthly service fee under the terms of the Master Servicing Agreement.

(c) *Other agent fees.* Agent fees and charges necessary to market and service Debentures and Certificates may be assessed to the Borrower or the investor. The fees must be approved by SBA and published periodically in the Federal Register.

(d) *SBA fees.* The Borrower shall pay SBA an annual fee of 0.125 percent of the outstanding balance of each 504 loan approved after October 1, 1995.

§ 120.972 Oversight and evaluation of CDCs and ADCs.

SBA may conduct an operational review of a CDC or ADC. The SBA Office of Inspector General may conduct, supervise or coordinate compliance audits pursuant to the Inspector General Act. The CDC or ADC must cooperate and make its staff, records, and facilities available.

CDC Transfer, Suspension and Revocation

§ 120.980 Transfer of CDC to ADC status.

SBA shall transfer to ADC status any CDC that fails to meet the activity level required by SBA, on average over two consecutive fiscal years. SBA shall notify the CDC in writing of the action and of the opportunity for a hearing pursuant to part 134 of this chapter at least 10 business days prior to the transfer. During the pendency of a hearing, SBA's action will remain in effect.

§ 120.981 Voluntary transfer and surrender of CDC certification.

A CDC may not transfer its certification or withdraw from the 504 program without SBA's consent. The CDC must provide a plan to SBA to transfer its portfolio. The portfolio may only be transferred with SBA's written consent. If a CDC desires to withdraw from the 504 program, it must forfeit its portfolio to SBA. SBA may conduct an audit of the transferring or withdrawing CDC.

§ 120.982 Correcting CDC servicing deficiencies.

SBA may require corrective action, including the transfer of existing or pending financings to another CDC in good standing. SBA must notify the CDC in writing of any servicing, reporting or collection deficiencies and the corrective actions to be taken. SBA may instruct the CSA to withhold service and late fees and may assess the CDC up to $250 per day for expenses incurred by SBA to correct the deficiencies. If non-compliance continues for 90 days, SBA may take the fees as compensation for its efforts to obtain compliance.

§ 120.983 Transfer of CDC servicing to SBA or another CDC.

If a CDC fails to correct servicing deficiencies, or is unable or unwilling to service its portfolio, SBA may assume the servicing or require the transfer of all or part of the CDC's portfolio to another CDC within or adjoining the deficient CDC's Area of Operations. If there is no suitable CDC, SBA may approve a transfer to another entity. Future service fees from transferred loans will be paid to the transferee. In addition, the CDC's processing authority will be temporarily suspended.

§ 120.984 Suspension or revocation of CDC certification.

(a) *Suspend or revoke.* SBA may suspend or revoke the CDC's certification if a CDC:

(1) Violates a statute, an SBA regulation, or the terms of a Debenture, authorization, or agreement with SBA;

(2) Makes a material false statement, knowingly misrepresents, or fails to state a material fact;

(3) Fails to maintain good character;

(4) Fails to operate according to prudent lending standards;

(5) Fails to correct servicing, collection, reporting, or other deficiencies; or

(6) Is unable or unwilling to operate in accordance with the requirements of this part.

(b) *Transfer portfolio.* Upon suspension or revocation, the CDC must transfer its remaining portfolio and any 504 applications or financings in process to another CDC designated or approved by SBA. If a pending 504 financing is completed after a transfer, any deposit must also be transferred. Any fees must be apportioned by SBA between the two CDCs in proportion to services performed.

(c) *Provide written notice.* SBA must give written notice to the CDC at least 10 business days prior to the effective date of a suspension or revocation, informing the CDC of the opportunity for a hearing pursuant to part 134 of this chapter.

Enforceability of 501, 502 and 503 Loans and Other Laws

§ 120.990 501, 502, and 503 loans.

SBA has discontinued loan programs for 501, 502, and 503 loans. Outstanding loans remain under these programs, and Borrowers, CDCs, and SBA must comply with the terms and conditions of the corresponding notes and Debentures, and the regulations in effect when the obligations were undertaken or last in effect, if applicable.

§ 120.991 Effect of other laws.

No State or local law may preclude or limit SBA's exercise of its rights with respect to notes, guarantees, Debentures and Debenture Pools, or of its enforcement rights to foreclose on collateral.

PARTS 108, 116, 122, AND 131—[REMOVED]

2. Parts 108, 116, 122, and 131 are removed.

Dated: November 13, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–30327 Filed 12–14–95; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–34–95]

RIN 1545–AT78

Notice of Significant Reduction in the Rate of Future Benefit Accrual

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing temporary regulations relating to the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Section 204(h) of ERISA applies to defined benefit plans and to individual account plans that are subject to the funding standards of section 302 of ERISA. It requires the plan administrator to give notice of certain plan amendments to participants in the plan and certain other parties. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments must be received by March 14, 1996.

ADDRESSES: Send submissions to CC:DOM:CORP:R (EE–34–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (EE–34–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Betty J. Clary, (202) 622–6070 (not a toll-free number).

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).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by February 13, 1996.

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

The collection of information is in § 1.411(d)–6T which implements the statutory requirement of section 204(h) of ERISA that a plan administrator provide notice to participants and certain other parties if certain pension plans are amended to provide for a significant reduction in the rate of future benefit accrual. This collection of information is required to assure that the rights of participants in plans subject to section 204(h) of ERISA are protected. The likely respondents are small businesses. Responses to this collection of information are required under section 204(h) of ERISA in order for certain amendments to qualified plans to become effective.

These regulations do not involve any issues of confidentiality.

Estimated total annual reporting burden: 15,000 hours.

The estimated annual burden per respondent varies from 1 hour to 40 hours, depending on individual circumstances, with an estimated average of 5 hours.

Estimated number of respondents: 3,000.

Estimated annual frequency of responses: Once.

Background

Temporary regulations in the Rules and Regulations portion of this issue of the Federal Register amend the Income Tax Regulations (26 CFR part 1) (relating to section 411(d)). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a 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) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information: The principal author of these regulations is Betty J. Clary, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), 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 continues to read, in part, as follows:

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

Section 1.411(d)–6 also issued under Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt. * * *

Par. 2. Section 1.411(d)–6 is added to read as follows:

§ 1.411(d)–6 Section 204(h) notice.

[The text of this proposed section is the same as the text of § 1.411(d)–6T published elsewhere in this issue of the Federal Register.]

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30415 Filed 12–12–95; 1:23 pm]

BILLING CODE 4830–01–U

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26 CFR Part 301

[DL–01–95]

RIN 1545–AT48

Disclosure of Returns and Return Information to Procure Property or Services for Tax Administration Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations relate to the disclosure of returns and return information in connection with the procurement of property and services for tax administration purposes. The amendments would authorize the Department of Justice, including offices of United States Attorneys, to make such disclosures. Current disclosure authority within the Department of Justice rests only with the Tax Division. The amendments also reflect a change to the law made by the Omnibus Budget Reconciliation Act of 1990 regarding the type of services about which disclosures may be made.

DATES: Comments and requests for a public hearing must be received by March 14, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (DL–01–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (DL–01–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald Squires, 202–622- 4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 6103(n) of the Internal Revenue Code (Code) authorizes the disclosure of returns and return information, pursuant to regulations prescribed by the Secretary of the Treasury, ''to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return information, the programming, maintenance, repair,

testing, and procurement of equipment, and the providing of other services, for purposes of tax administration.''

Existing regulations promulgated under this section prescribe the persons who may make such disclosures, the situations under which such disclosures may be made and the notification and safeguarding procedures to be followed when such disclosures are made. Among the persons who may make such disclosures are officers and employees of the Tax Division of the Department of Justice. The amendments would authorize such disclosures by the Department of Justice (not solely the Tax Division) to third parties who provide services for tax administration purposes under the conditions and restrictions of the regulations. The amendments would provide that, for the purpose of this section, the ''Department of Justice'' includes offices of United States Attorneys.

The amendments would also conform the regulation to the language of section 6103(n), which was amended by the Omnibus Budget Reconciliation Act of 1990 to clarify that the disclosures authorized by this section included those in connection with ''the providing of other services'' (i.e., services other than those related to the mechanical processing of returns and return information).

Explanation of Provisions

As currently written, 26 CFR 301.6103(n)–1 authorizes the Tax Division of the Department of Justice, among other entities and individuals, to make disclosures of returns and return information pursuant to section 6103(n) of the Internal Revenue Code. This authority allows the Tax Division to disclose tax information incident to its contracts to private parties for, among other purposes, automated litigation support services.

The Department of Justice has indicated its intention to establish an expanded automated tracking system for all monetary judgments in favor of the United States, which will be operated by a private company under contract with the Department. Although the majority of tax cases are handled by the Tax Division, there are several United States Attorneys' offices that also have litigation responsibility in the civil tax area. In addition, the Tax Division refers some judgments in tax cases to the United States Attorneys for collection. Existing regulations arguably would not permit these offices, which are technically not part of the Tax Division, to disclose tax information incident to their inclusion of tax judgments in the automated tracking system.

The proposed amendment would authorize the Department of Justice, including offices of United States Attorneys, to make disclosures to procure property and services for tax administration purposes. Any such disclosures will be made under the same conditions and restrictions already set forth in the existing regulations. By definition, any office within the Department of Justice without tax administration duties will not have occasion or authority pursuant to these regulations to make such disclosures.

The proposed amendment would also authorize disclosures in connection with ''the providing of other services,'' i.e., services not related to the strict mechanical processing or manipulation of tax returns or return information. This would conform the regulations to the language of the statute, as amended by the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, 104 Stat. 1388–353).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, 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 Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Donald Squires, Office of the Assistant Chief Counsel (Disclosure Litigation), IRS. However, other personnel from the IRS, Department of Justice and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

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

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Para. 2. Section 301.6103(n)–1 is amended as follows:

1. The first sentence of paragraph (a) introductory text is amended by removing the language ''Tax Division,''.

2. Paragraph (a)(2) is amended by removing the language ''or to''.

3. Paragraph (a)(2) is further amended by adding the language ''or the providing of other services,'' immediately following the text ''other property,''.

4. The concluding text following paragraph (a)(2) is amended by removing the language ''Tax Division,''.

5. The second sentence of paragraph (d) introductory text is amended by removing the language ''Tax Division,''.

6. Paragraph (d)(2) is amended by removing the language ''Tax Division,''.

7. Paragraph (e)(1) is amended by removing the language '', and'' at the end of the paragraph and adding a semicolon in its place.

8. Paragraph (e)(2) is amended by removing the period at the end of the paragraph and adding ''; and'' in its place.

9. Paragraph (e)(3) is added.

10. The authority citation immediately following § 301.6103(n) is removed.

The addition reads as follows:

§ 301.6103(n)–1 Disclosure of returns and return information in connection with procurement of property and services for tax administration purposes.

* * * * *

(e) * * *

(3) The term *Department of Justice* includes offices of the United States Attorneys.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–30505 Filed 12–14–95; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5346–6]

Clean Air Act (CAA) Proposed Interim Approval of Operating Permits Program and Delegation of 112(l) Authority; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the operating permits program submitted by the state of Missouri for the purpose of complying with Federal requirements for states which develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources. This notice explains EPA—s rationale for the proposed action, and identifies revisions to the program which must be made before EPA can take final action to fully approve it.

DATES: Comments on this proposed action must be received in writing by January 16, 1996.

ADDRESSES: Comments should be addressed to Joshua A. Tapp, U.S. Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the Missouri submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the U.S. Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Joshua Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under Title V of the Clean Air Act (the Act) as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program, and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993, date, or by the end of an interim period, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for 18 months following the effective date of final interim approval and could not be renewed. During the interim approval period, the state of Missouri would be protected from sanctions for failure to have an approved program, and EPA would not be obligated to promulgate, administer, and enforce a Federal permits program for Missouri. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the three-year time period for processing the initial permit applications.

Following the final interim approval, if Missouri has failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, an 18-month clock for mandatory sanctions would commence. If Missouri then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would apply sanctions as required by section 502(d)(2) of the Act, which would remain in effect until EPA determined that the state of Missouri had corrected the deficiency by submitting a complete corrective program.

If, following final interim approval, EPA were to disapprove Missouri's complete corrective program, EPA would be required under section 502(d)(2) to apply sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Missouri had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval.

If EPA has not granted full approval to Missouri's program by the expiration of an interim approval, EPA must promulgate, administer, and enforce a Federal permits program for Missouri upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of Submission by State Authority

The analysis contained in this notice focuses on specific elements of the Missouri Department of Natural Resources (MDNR) Title V operating permits program that must be corrected to meet the minimum requirements of part 70. The full program submittal; the Technical Support Document (TSD), which contains a detailed analysis of the submittal; and other relevant materials are available for inspection as part of the public docket. The docket may be viewed during regular business hours at the address listed above.

1. Support Materials

The Governor of Missouri submitted an administratively and technically complete Title V Operating Permit Program on January 13, 1995. The EPA deemed the program submittal complete on March 2, 1995. At EPA's request, the State provided supplemental program information on August 14, 1995; September 19, 1995; and October 16, 1995.

The program submittal includes a legal opinion from the Attorney General of Missouri stating that the laws of the State provide adequate legal authority to carry out all aspects of the program, and a description of how the state intends to implement the program. The submittal additionally contains evidence of proper adoption of the program regulations, permit application forms, a data management system, and a permit fee demonstration.

2. Program Description

The Governor's letter states that the entire geography of Missouri will be covered by this program. There are no Indian tribal lands in Missouri. The letter also states that MDNR will be the official permitting authority responsible for implementation of the program. Finally, the state requested approval and delegation of authority to implement section 112(l) of the Act.

In addition to the state's part 70 permit rules, the state has established a State Implementation Plan (SIP) based permit system for creating Federally enforceable limitations, called the intermediate program. This permit mechanism will allow qualifying sources to avoid having to obtain a part

70 operating permit. The EPA published a direct final approval of this program in the Federal Register on September 25, 1995 (60 FR 49340). Finally, Missouri will issue a third class of permit to all other air emission sources that meet or exceed the de minimis levels, yet fall below the major source threshold. This third class of source will require a basic permit. The basic operating permit program is not a Federal program and has not been submitted to EPA for approval.

The state has been collecting emission fees for two years, which have been used for ''ramp-up'' activities, including the hiring of additional staff. The state emissions fee is currently set at $25.70 per ton, which may be adjusted by the Missouri Air Conservation Commission through an administrative revision of rule 10 CSR 10–6.110. The state provided a resource demonstration, discussed later, to justify deviating from the presumptive minimum of $25 per ton, Consumer Price Index (CPI) adjusted. The state is also authorized under its statute to collect fees for non-Title V program activities.

The program submittal also contains information on the organizational structure and function of the components of the air program, including the regional and local offices which are available to assist in implementation of the program.

3. Regulations and Program Implementation

The Missouri program, including the core operating permit regulations, 10–CSR 6.065 (Division 10, Chapter 6, MDNR) substantially meets the minimum requirements for interim approval as they are denoted in 40 CFR part 70.4(d)(3). These requirements pertain to: (1) Adequate fees, (2) applicable requirements, (3) fixed terms, (4) public participation, (5) EPA and affected state review, (6) permit issuance, (7) enforcement, (8) operational flexibility, (9) streamlined procedures, (10) permit application, and (11) alternative scenarios.

However, Missouri must make the following program revisions for full approval: (1) Revise its definitions rule, 10 CSR 10–6.020 to: (a) revise (2)(I)7 to update a reference to the Standard Industrial Classification Manual, and (b) revise (3)(B), Table 2—List of Named Installations, to make it consistent with the list in the definition of major source in 70.2; (2) revise rule 10 CSR 10–6.065, Operating Permits by: (a) revising (1)(D)2 to clarify the meaning of ''fugitive air pollutant'' as it relates to part 70 installations; (b) revise (3)(D) to clarify part 70 applicability with respect to emissions from exempt installations and emission units; (c) revise (6)(C)1.C.(II)(b) to clarify the retention of record requirements in permits, consistent with 70.6(a)(3); (d) revise (6)(C)1.G.(I) to clarify the general requirements for permit compliance and noncompliance, consistent with 70.6(a)(6); (e) revise (6)(C)4.A. to correct a citation error and to clarify that the requirement for EPA and affected state review applies to general permits, consistent with 70.6(d)(1); (f) revise (6)(C)7.B.(IV) to make the emergency provision notice consistent with 70.6(g)(3); (g) revise (6)(C)8, operational flexibility provisions, to clarify the term ''emissions allowable under the permit''; (h) revise (6)(E)5.B.(I), minor permit modification criteria, to be consistent with 70.7(e)(2)(I)(A)(3); (i) revise (6)(E)5.B.(I) to add a paragraph (b) to incorporate the economic incentive provisions consistent with 70.7(e)(2)(I)(B); (j) revise (6)(E)5.C.(I)(b) to correct the threshold for group processing of minor permit modifications to be consistent with 70.7(e)(2)(I)(B); and (k) revise (6)(E)5.D.(II)(a), significant permit modification procedures, to be consistent with 70.4(b)(2) and 70.5(c), and make minor citation corrections to rules (6)(B)3.I.(IV), (6)(E)5.B.(II)(a), (6)(E)5.C.(V), and (6)(E)6.C. A detailed discussion of the necessary rule revisions is included in the TSD, and in the docket for this rulemaking. In addition, the rule changes proposed by Missouri to meet the requirements noted above are included in the docket.

Missouri has the authority to issue a variance from state requirements under section 643.110 of the state statutes. This provision was not included by the state in its operating permit program submittal, and EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on this provision of state law. The EPA has no authority to approve provisions of state law, such as the variance provision referred to, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to obtain or comply with a Federally enforceable part 70 permit, except where such relief is granted through the procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements, notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

4. Fee Demonstration

The state provided a detailed fee demonstration because the emissions fee, $25.70 per ton (not adjusted), is below the presumptive minimum of $25 plus CPI. The fee demonstration included a detailed analysis of projected hourly program requirements and costs for each of the next four years. An emission inventory of Title V sources for two preceding years (1993 and 1994) and emissions fees collected was also provided. Missouri describes a cash receipts system that identifies Title V fee receipts, a time accounting system that tracks Title V program labor costs, and an accounts payable system that tracks Title V program expenses.

5. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or commitments for section 112 implementation. Missouri has demonstrated in its program submittal adequate legal authority to implement and enforce all section 112 requirements through the Title V permit. This legal authority is contained in Missouri's enabling legislation and in regulatory provisions defining ''applicable requirements,'' and states that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Missouri to issue permits that ensure compliance with all section 112 requirements. The EPA is interpreting the above legal authority to mean that Missouri is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the TSD accompanying this rulemaking and the April 13, 1993, guidance memorandum titled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz.

b. Section 112(g) Case-by-Case Maximum Achievable Control Technology (MACT) For Modified/Constructed and Reconstructed Major Toxic Sources.

The EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of 112(g) applicability.

The notice postpones the effective date of 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Missouri must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing Federal regulations.

The EPA is aware that Missouri lacks a program designed specifically to implement section 112(g). However, Missouri does have a program for review of new and modified hazardous air pollutant sources that can serve as an adequate implementation vehicle during the transition period, because it would allow Missouri to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

The EPA is proposing to approve Missouri's preconstruction permitting program under the authority of Title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between 112(g) promulgation and adoption of a state rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state air programs to implement section 112(g), Title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and Title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until state regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the 112(g) rule to provide adequate time for the state to adopt regulations consistent with the Federal requirements.

c. Section 112(l)—State Air Toxics Programs.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Missouri has demonstrated that it meets these requirements. Therefore, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR part 63.91 to Missouri for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and section 112 infrastructure programs, that are unchanged from Federal rules as promulgated. Missouri has informed EPA that it intends to accept delegation of section 112 standards through adoption by reference. In addition, EPA is also proposing delegation of all existing standards and programs under 40 CFR parts 61 and 63 for part 70 and non-part 70 sources.

d. Title IV/Acid Rain. The legal requirements for approval under the Title V operating permits program for a Title IV program were cited in EPA guidance distributed on May 21, 1993, titled ''Title V-Title IV Interface Guidance for States.'' Missouri has met the criteria of this guidance and has adopted by reference acid rain rules at 40 CFR 72.

B. Options for Approval/Disapproval and Implications

1. The EPA is proposing to grant interim approval for two years to the operating permits program submitted by the state of Missouri. In order to receive full approval, the state must adopt and submit to the EPA the rule changes identified above within 18 months of receiving final interim approval. Specifically, the state must amend rules 10 CSR 10–6.020, Definitions, and 10 CSR 10–6.065, Operating permits, for consistency with part 70.

2. Program for Straight Delegation of Section 112 Standards.

As discussed above, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR part 63.91 to Missouri for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and infrastructure programs under section 112 that are unchanged from Federal rules as promulgated. In addition, EPA proposes to delegate existing standards under 40 CFR parts 61 and 63 for both part 70 and non-part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the state's submittal and other information relied upon for the proposed approval are contained in a docket maintained at EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

1. To allow interested parties a means to identify and locate documents for participating in the rulemaking process, and

2. To serve as the record in case of judicial review. The EPA will consider any comments received by Janaury 16, 1996.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this state operating permit program the state has elected to adopt the program provided for under Title V of the CAA. These rules may bind the state government to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. The EPA has

also determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. sections 7401–7671q.

Dated: December 6, 1995.

Dennis Grams,

Regional Administrator.

[FR Doc. 95–30554 Filed 12–14–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 372

[OPPTS–400097B; FRL–4991–4]

Toxic Chemical Release Reporting; Community Right-to-Know; Reopening of Public Comment Period; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of public comment period; correction.

SUMMARY: In the Federal Register of October 27, 1995, EPA published an administrative stay of the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA), for 2,2-dibromo-3-nitrilopropionamide (DBNPA) (Chemical Abstracts Service (CAS) No. 10222–01–2). The administrative stay also requested comment on EPA's review of a petition to delete DBNPA from the EPCRA section 313 list of toxic chemicals. The period for accepting comments on EPA's review of the petition ended on November 27, 1995. EPA has received a request to extend the comment period and is granting that request by reopening the comment period for 45 days. In addition, this document corrects an error in the October 27, 1995 notice. The green algal toxicity value was incorrectly listed.

DATES: All comments must be received on or before January 29, 1996.

ADDRESSES: Written comments should be submitted in triplicate to : OPPT Docket Clerk (7407), TSCA Nonconfidential Information Center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–400097. No CBI should be submitted through e-mail. Electronic comments on the information presented in this document may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Project Manager, 202–260–9592, e-mail: doa.maria@epamail.epa.gov for specific information on this action. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 27, 1995 (60 FR 54949), EPA published an administrative stay of the reporting requirements under section 313 of EPCRA and section 6607 of the Pollution Prevention Act of 1990 (PPA) for DBNPA. EPA issued the administrative stay because EPA had incorrectly categorized the effects observed in certain data relating to DBNPA prior to promulgation of the final rule adding DBNPA to the EPCRA section 313 list of toxic chemicals.

The document also requested comment on EPA's review of a petition to delete DBNPA from the EPCRA section 313 list of toxic chemicals. EPA preliminarily determined that DBNPA can reasonably be anticipated to cause subchronic gastrointestinal effects, and can reasonably be anticipated to cause toxicity to freshwater green algae, chronic effects on freshwater invertebrates and chronic effects on oysters at relatively low concentrations. The period for accepting comments on EPA's review of the petition ended November 27, 1995. EPA has received a request to extend the comment period and is granting that request by reopening the comment period for 45 days. In addition, this notice corrects an error in the October 27, 1995 document. The green algal toxicity value was incorrectly listed.

I. Reopening of Public Comment Period

In the Federal Register of October 27, 1995, EPA requested public comment on the information presented in the document regarding the continued listing of DBNPA on the EPCRA section 313 list of toxic chemicals. In that notice, EPA stated that all comments must be received on or before November 27, 1995. In response to a request from Dow Chemical Company to extend the comment period, EPA is reopening the comment period for an additional 45 days. All comments must be received on or before January 26, 1996.

II. Green Algal Toxicity Value Correction

In the October 27, 1995 Federal Register, on page 54951, first column, second full paragraph, 24th line, the green algal 96-hour EC_{50} (median effective concentration) for DBNPA was incorrectly listed as ''0.010 mg/L ''; the value should have read 0.08 mg/L.

III. Public Docket

A record has been established for the administrative stay under docket number ''OPPTS–400097'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for the administrative stay, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting

and recordkeeping requirements, and Toxic chemicals.

Dated: December 8, 1995.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–30601 Filed 12–14–95; 8:45 am]

BILLING CODE 6560–50–F

48 CFR Parts 1535 and 1552

[FRL–5332–3]

Acquisition Regulation; Confidential Business Information

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise its acquisition regulation by revising both the prescription for use of solicitation provisions and contract clauses regarding collection, use, access, treatment, and disclosure of confidential business information (CBI), and adding solicitation provisions and contract clauses on CBI.

DATES: Written comments should be submitted to the contact listed below not later than February 13, 1996.

ADDRESSES: Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: Senzel.Louise@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 format or ASCII file format. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Louise Senzel, Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street, SW, Washington, D.C. 20460. Telephone: (202) 260–6204.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

The proposed rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

C. Regulatory Flexibility Act

The EPA certifies that this proposed rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the proposed rule impose no reporting, record-keeping, or any compliance costs.

D. Unfunded Mandates

This proposed rule will not impose unfunded mandates on state or local entities, or others.

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 1535 and 1552

Government procurement.

Therefore, Chapter 15 of title 48, Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for parts 1535 and 1552 continue to read as follows:

Authority: Sec. 205(c), 63 stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1535.007 is revised to read as follows:

1535.007 Solicitations.

(a) Contracting Officers shall insert the following provisions in all solicitations when the Contracting Officer has determined that EPA may furnish the contractor with confidential business information which EPA has obtained from third parties under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.).

(1) 1552.235–72 Control and Security of Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information; and

(2) 1552.235–73 Access to Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information.

(b) Contracting Officers shall insert the following provisions in all solicitations when the Contracting Officer has determined that EPA may furnish the contractor with confidential business information which EPA has obtained from third parties under the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*)

(1) 1552.235–74 Control and Security of Toxic Substances Control Act Confidential Business Information; and

(2) 1552.235–75 Access to Toxic Substances Control Act Confidential Business Information.

3. Subsection 1535.007–70 is amended by revising paragraphs (b) and (c) and adding paragraph (d) through (f) to read as follows:

1535.007–70 Contract clauses.

(a) * * *

(b) The Contracting Officer shall insert the clause at 1552.235–71, Treatment of Confidential Business Information, in solicitations and contracts when the Contracting Officer has determined that in the performance of the contract, EPA may furnish confidential business information to the contractor obtained from third parties under the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. 301 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*), and provision 1552.235–70, Release of Contractor Confidential Business Information. EPA regulations on confidentiality of business information in 40 CFR part 2, subpart B, require that the contractor agree to the clause entitled ''Treatment of Confidential Business Information'' before any confidential business information may be furnished to the contractor.

(c) The Contracting Officer shall insert the clause at 1552.235–76, Treatment of Confidential Business Information, in solicitations and contracts when the Contracting Officer has determined that in the performance of the contract, EPA may furnish the contractor with confidential business information obtained from third parties under the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*). EPA regulations on confidentiality of business information in 40 CFR part 2, subpart B, require that the contractor agree to the clause entitled ''Treatment of Confidential Business Information'' before any confidential business information may be furnished to the contractor.

(d) The Contracting Officer shall insert the clause at 1552.235–77 Data Security for Federal Insecticide, Fungicide, Rodenticide Act Confidential Business Information, when the contract involves access to confidential business information related to the Federal Insecticide, Fungicide, Rodenticide Act and the Treatment of Confidential Business Information clause (1552.235–71) and the Screening Business Information for Claims of Confidentiality clause (1552.235–70) are included.

(e) The Contracting Officer shall insert the clause at 1552.235–78 Data Security for Toxic Substances Control Act Confidential Business Information, when the contract involves access to confidential business information related to the Toxic Substances Control Act and the Treatment of Confidential Business Information clause (1552.235–76) and Screening Business Information for Claims of Confidentiality clause (1552.235–70) are included.

(f) Contracting Officers shall insert the clause 1552.235–79 Release of Contractor Confidential Business Information in all solicitations and contracts in order to authorize the Agency to release confidential business information under certain circumstances.

4. Subpart 1552.2, is amended by revising section 1552.235–72, and adding sections 1552.235–73 through 1552.235–79 to read as follows:

1552.235–72 Control and Security of Federal Insecticide, Fungicide, Rodenticide Act Confidential Business Information (XXX 1995).

As prescribed in 1535.007(a), insert the following provision:

Control and Security of Federal Insecticide, Fungicide, Rodenticide Act Confidential Business Information (XXX 1995)

The offeror certifies that—

—The Contractor and its employees have read and are familiar with the requirements for the control and security of Federal Insecticide, Fungicide, Rodenticide Act confidential business information contained in the manual entitled ''Federal Insecticide, Fungicide, Rodenticide Act Information Security Manual''. (See also 1552.235–77 elsewhere in this solicitation.)

(End of Provision)

1552.235–73 Access to Federal Insecticide, Fungicide, Rodenticide Act Confidential Business Information (XXX 1995).

As prescribed in 1535.007(a), insert the following provision:

Access to Federal Insecticide, Fungicide, Rodenticide Act Confidential Business Information (XXX 1995)

In order to perform duties under the contract, the Contractor will need to be authorized for access to Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) confidential business information (CBI). The Contractor and all of its employees handling CBI while working under the contract will be required to follow the procedures contained in the security manual entitled ''FIFRA Information Security Manual''. These procedures include applying for FIFRA CBI access authorization for each individual working under the contract who will have access to FIFRA CBI, execution of confidentiality agreements, and designation by the Contractor of an individual to serve as a Document Control Officer. The Contractor will be required to abide by those clauses contained in EPAAR 1552.235–70, 1552.235–71, and 1552.235–77 that are appropriate to the activities set forth in the contract.

Until EPA has approved the Contractor's security plan, the Contractor may not be authorized for FIFRA CBI access away from EPA facilities.

(End of Provision)

1552.235–74 Control and Security of Toxic Substances Control Act Confidential Business Information (XXX 1995).

As prescribed in 1535.007(b), insert the following provision:

Control and Security of Toxic Substances Control Act Confidential Business Information (XXX 1995)

The offeror certifies that—

—The Contractor and its employees have read and are familiar with the requirements for the control and security of Toxic Substances Control Act confidential business information contained in the manual entitled ''Toxic Substances Control Act Confidential Business Information Security Manual''. (See also 1552.235–78 elsewhere in this solicitation.)

(End of Provision)

1552.235–75 Access to Toxic Substances Control Act Confidential Business Information (XXX 1995).

As prescribed in 1535.007(b), insert the following provision:

Access to Toxic Substances Control Act Confidential Business Information (XXX 1995)

In order to perform duties under the contract, the Contractor will need to be authorized for access to Toxic Substances Control Act (TSCA) confidential business information (CBI). The Contractor and all of its employees handling CBI while working under the contract will be required to follow the procedures contained in the security manual entitled ''TSCA Confidential Business Information Security Manual''. These procedures include applying for TSCA CBI access authorization for each individual working under the contract who will have access to TSCA CBI, execution of confidentiality agreements, and designation by the Contractor of an individual to serve as a Document Control Officer. The Contractor will be required to abide by those clauses contained in EPAAR 1552.235–70, 1552.235–71, and 1552.235–78 that are appropriate to the activities set forth in the contract.

Until EPA has inspected and approved the Contractor's facilities, the Contractor may not be authorized for TSCA CBI access away from EPA facilities.

(End of Provision)

1552.235–76 Treatment of Confidential Business Information (XXX 1995).

As prescribed in 1535.007–70(c), insert the following clause:

Treatment of Confidential Business Information (XXX 1995)

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose confidential business information (CBI) to the Contractor necessary to carry out the work required under this contract. The Contractor agrees to use the CBI only under the following conditions:

(1) The Contractor and Contractor's employees shall (i) use the CBI only for the purposes of carrying out the work required by the contract; (ii) not disclose the information to anyone other than properly cleared EPA employees without the prior written approval of the Assistant General Counsel for Information Law or his/her designee; and (iii) return the CBI to the PO or his/her designee, whenever the information is no longer required by the Contractor for performance of the work required by the contract, or upon completion of the contract.

(2) The Contractor shall obtain a written agreement to honor the above limitations from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(3) The Contractor agrees that these contract conditions concerning the use and disclosure of CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected businesses having a proprietary interest in the information.

(4) The Contractor shall not use any CBI supplied by EPA or obtained during performance hereunder to compete with any business to which the CBI relates.

(b) The Contractor agrees to obtain the written consent of the CO, after a written determination by the appropriate program office, prior to entering into any subcontract that will involve the disclosure of CBI by the Contractor to the subcontractor. The Contractor agrees to include this clause, including this paragraph (b), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(End of Clause)

1552.235–77 Data Security for Federal Insecticide, Fungicide, Rodenticide Act Confidential Business Information (XXX 1995).

As prescribed in 1535.007–70(d), insert the following clause:

Data Security for Federal Insecticide, Fungicide, Rodenticide Act Confidential Business Information (XXX 1995)

The Contractor shall handle Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) confidential business information (CBI) in accordance with the contract clause entitled ''Treatment of Confidential Business Information'' and ''Screening Business Information for Claims of Confidentiality,'' the provisions set forth below, and the Contractor's approved detailed security plan.

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose FIFRA CBI to the contractor necessary to carry out the work required under this contract. The Contractor shall protect all FIFRA CBI to which it has access (including

CBI used in its computer operations) in accordance with the following requirements:

(1) The Contractor and Contractor's employees shall follow the security procedures set forth in the FIFRA Information Security Manual. The manual may be obtained from the Project Officer (PO) or the Chief, Information Services Branch (ISB), Program Management and Support Division, Office of Pesticide Programs (OPP) (H7502C), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

(2) The Contractor and Contractor's employees shall follow the security procedures set forth in the Contractor's security plan(s) approved by EPA.

(3) Prior to receipt of FIFRA CBI by the Contractor, the Contractor shall submit a certification statement to the Chief of the ISB, with a copy to the Contracting Officer (CO), certifying that all employees who will be cleared for access to FIFRA CBI have been briefed on the handling, control and security requirements set forth in the FIFRA Information Security Manual.

(4) The Contractor Document Control Officer (DCO) shall obtain a signed copy of the FIFRA ''Contractor Employee Confidentiality Agreement'' from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(b) The Contractor agrees that these requirements concerning protection of FIFRA CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(c) The Contractor understands that CBI obtained by EPA under FIFRA may not be disclosed except as authorized by the Act, and that any unauthorized disclosure by the Contractor or the Contractor's employees may subject the Contractor and the Contractor's employees to the criminal penalties specified in FIFRA (7 U.S.C. 136h(f)). For purposes of this contract, the only disclosures that EPA authorizes the Contractor to make are those set forth in the clause entitled ''Treatment of Confidential Business Information.''

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(e) At the request of EPA or at the end of the contract, the Contractor shall return to the EPA PO or his/her designee all documents, logs, and magnetic media which contain FIFRA CBI. In addition, each Contractor employee who has received FIFRA CBI clearance will sign a ''Confidentiality Agreement for Contractor Employees Upon Relinquishing FIFRA CBI Access Authority''. The Contractor DCO will also forward those agreements to the EPA PO or his/her designee, with a copy to the CO, at the end of the contract.

(f) If, subsequent to the date of this contract, the Government changes the security requirements, the CO shall equitably adjust affected provisions of this contract, in accordance with the ''Changes'' clause when:

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(End of Clause)

1552.235–78 Data Security for Toxic Substances Control Act Confidential Business Information (XXX 1995).

As prescribed in 1535.007–70(e), insert the following clause:

Data Security for Toxic Substances Control Act Confidential Business Information (XXX 1995)

The Contractor shall handle Toxic Substances Control Act (TSCA) confidential business information (CBI) in accordance with the contract clause entitled ''Treatment of Confidential Business Information'' and ''Screening Business Information for Claims of Confidentiality.''

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose TSCA CBI to the contractor necessary to carry out the work required under this contract. The Contractor shall protect all TSCA CBI to which it has access (including CBI used in its computer operations) in accordance with the following requirements:

(1) The Contractor and Contractor's employees shall follow the security procedures set forth in the TSCA CBI Security Manual. The manual may be obtained from the Director, Information Management Division (IMD), Office of Pollution Prevention and Toxics (OPPT), U.S. Environmental Protection Agency (EPA), 401 M Street, SW, Washington, DC 20460. Prior to receipt of TSCA CBI by the Contractor, the Contractor shall submit a certification statement to the Director of the EPA OPPT/Office of Program Management and Evaluation, with a copy to the Contracting Officer (CO), certifying that all employees who will be cleared for access to TSCA CBI have been briefed on the handling, control, and security requirements set forth in the TSCA CBI Security Manual.

(2) The Contractor shall permit access to and inspection of the Contractor's facilities in use under this contract by representatives of EPA's Assistant Administrator for Administration and Resources Management, and the TSCA Security Staff in the OPPT, or by the EPA Project Officer.

(3) The Contractor Document Control Officer (DCO) shall obtain a signed copy of EPA Form 7740–6, ''TSCA CBI Access Request, Agreement, and Approval'' from each of the Contractor's employees who will have access to the information before the employee is allowed access. In addition, the Contractor shall obtain from each employee who will be cleared for TSCA CBI access all information required by EPA or the U.S. Office of Personnel Management for EPA to conduct a Minimum Background Investigation.

(b) The Contractor agrees that these requirements concerning protection of TSCA CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(c) The Contractor understands that CBI obtained by EPA under TSCA may not be disclosed except as authorized by the Act, and that any unauthorized disclosure by the Contractor or the Contractor's employees may subject the Contractor and the Contractor's employees to the criminal penalties specified in TSCA (15 U.S.C. 2613(d)). For purposes of this contract, the only disclosures that EPA authorizes the Contractor to make are those set forth in the clause entitled ''Treatment of Confidential Business Information.''

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(e) At the request of EPA or at the end of the contract, the Contractor shall return to the EPA PO or his/her designee, all documents, logs, and magnetic media which contain TSCA CBI. In addition, each Contractor employee who has received TSCA CBI clearance will sign EPA Form 7740–18, ''Confidentiality Agreement for Contractor Employees Upon Relinquishing TSCA CBI Access Authority''. The Contractor DCO will also forward those agreements to the EPA OPPT/IMD, with a copy to the CO, at the end of the contract.

(f) If, subsequent to the date of this contract, the Government changes the security requirements, the CO shall equitably adjust affected provisions of this contract, in accordance with the ''Changes'' clause when:

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(End of Clause)

1552.235–79 Release of contractor confidential business information (XXX 1995).

As prescribed in 1535.007–70(f), insert the following clause:

Release of Contractor Confidential Business Information (XXX 1995)

(a) The Environmental Protection Agency (EPA) may find it necessary to release information submitted by the Contractor either in response to this solicitation or pursuant to the provisions of this contract, to individuals not employed by EPA. Business information that is ordinarily entitled to confidential treatment under existing Agency regulations (40 CFR part 2) may be included in the information released to these individuals. Accordingly, by submission of this proposal or signature on this contract or other contracts, the Contractor hereby consents to a limited release of its confidential business information (CBI).

(b) Possible circumstances where the Agency may release the Contractor's CBI include, but are not limited to the following:

(1) To other Agency contractors tasked with assisting the Agency in the recovery of Federal funds expended pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, as amended, (CERCLA or Superfund);

(2) To the U.S. Department of Justice (DOJ) and contractors employed by DOJ for use in advising the Agency and representing the Agency in procedures for the recovery of Superfund expenditures;

(3) To parties liable, or potentially liable, for costs under CERCLA Sec. 107 (42 U.S.C. 9607), et al, and their insurers (Potentially Responsible Parties) for purposes of facilitating settlement or litigation of claims against such parties;

(4) To other Agency contractors who, for purposes of performing the work required under the respective contracts, require access to information the Agency obtained under the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Federal Water Pollution Control Act (33 U.S.C.1251 *et seq.*); the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*); the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*); or the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*);

(5) To other Agency contractors tasked with assisting the Agency in handling and processing information and documents in the administration of Agency contracts, such as providing both preaward and post award audit support and specialized technical support to the Agency's technical evaluation panels;

(6) To employees of grantees working at EPA under the Senior Environmental Enrollee (SEE) Program;

(7) To Speaker of the House, President of the Senate, or Chairman of a Committee or Subcommittee;

(8) To entities such as the General Accounting Office, boards of contract appeals, and the Courts in the resolution of solicitation or contract protests and disputes;

(9) To Agency contractor employees engaged in information systems analysis, development, operation, and maintenance, including performing data processing and management functions for the Agency; and

(10) Pursuant to a court order or Court-supervised agreement.

(c) The Agency recognizes an obligation to protect the contractor from competitive harm that may result from the release of such information to a competitor. (See also the clauses in this document entitled ''Screening Business Information for Claims of Confidentiality'' and ''Treatment of Confidential Business Information.'') Except where otherwise provided by law, the Agency will permit the release of CBI under subparagraphs (1), (3), (5), or (9) only pursuant to a confidentiality agreement.

(d) With respect to contractors, 1552.235–71 will be used as the confidentiality agreement. With respect to Potentially Responsible Parties, such confidentiality agreements may permit further disclosure to other entities where necessary to further settlement or litigation of claims under CERCLA. Such entities include, but are not limited to accounting firms and technical experts able to analyze the information, provided that they also agree to be bound by an appropriate confidentiality agreement.

(e) This clause does not authorize the Agency to release the contractor's CBI to the public pursuant to a request filed under the Freedom of Information Act.

(f) The Contractor agrees to include this clause, including this paragraph (f), in all subcontracts at all levels awarded pursuant to this contract that require the furnishing of confidential business information by the subcontractor.

(End of Clause)

Dated: October 30, 1995.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 95–30357 Filed 12–14–95; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 60, No. 241
Friday, December 15, 1995

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

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Public Hearings on the Effects of Lifting the Export Ban on Alaskan North Slope Crude Oil

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of public hearings.

SUMMARY: The Department of Commerce's Bureau of Export Administration (BXA) is holding public hearings to determine the effects on the environment and the economy of lifting the ban on the export of Alaskan North Slope (ANS) crude oil. BXA is conducting the hearings pursuant to the legislation that the President signed on November 28, which, among other things, requires him to conduct an environmental review, as well as to examine the effect of exports on jobs, consumers, and supplies of oil. This notice identifies the issues on which the Department is interested in obtaining the public's views. It also sets forth the procedures for public participation in the hearings.

DATES: The hearings will be held in Washington, DC, on January 3, 1996; Seattle, Washington, on January 5, 1996; Anchorage, Alaska on January 8, 1996; and Bakersfield, California on January 10, 1996. Requests to speak must be submitted by December 22, 1995. The hearing in Washington, DC will be held in the main auditorium of the Herbert Hoover Building, which is located at 14th Street and Pennsylvania Avenue, NW., Washington, DC, 20230. The hearing in Seattle will be held in Building 9 Auditorium, at the NOAA Western Regional Center, which is located at 7600 Sand Point Way, N.E., Seattle, Washington 98115. The hearing in Anchorage will be held in the auditorium of the Anchorage Museum of History and Art, which is located at 121 West 7th Avenue, Anchorage, Alaska. The hearing in Bakersfield will be held at the Sheraton Bakersfield, in the Belridge Room which is located at 5101 California Avenue, Bakersfield, California 93309.

ADDRESSES: Send requests to speak and written copies of the oral presentation to Steven C. Goldman, Acting Director, Office of Chemical and Biological Controls and Treaty Compliance, Room 2093, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC, 20230.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Manager, Short Supply Program, Office of Chemical and Biological Controls and Treaty Compliance, Room 2089, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC, 20230, Telephone (202) 482–0894.

SUPPLEMENTARY INFORMATION:

I. Background and Specific Comments Requested

A. Background

On November 28, 1995, the President signed legislation (S. 395) authorizing exports of Alaskan North Slope (ANS) crude oil when transported in U.S.-flag tankers, unless the President determines that such exports would not be in the national interest. The statute requires the President to consider the results of an ''appropriate environmental review'' and other issues prior to making his national interest determination.

As amended by S. 395, Section 28(s)(1) of the Mineral Leasing Act (30 U.S.C. 185) provides that:

In evaluating whether exports of this oil are in the national interest, the President shall, at a minimum consider:

1. whether exports of ANS crude oil would diminish the total quantity or quality of petroleum available to the United States;

2. the results of an appropriate environmental review, including consideration of appropriate measures to mitigate any potential effects of exports of this oil on the environment, which shall be completed within four months of the date of enactment; and

3. whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil price increases significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories.

B. Specific Comments Requested

The U.S. Department of Commerce is holding public hearings as part of its environmental review. The Department is soliciting public comments on the environmental and oil supply and pricing issues described above to ensure that the public has a meaningful opportunity to address the issues identified in the legislation. The Department has decided to conduct four public hearings in order for the public to provide suggestions to the Administration as early as practicable about issues that should be considered in preparing the required review of environmental and economic factors for the President's consideration.

The Department is particularly interested in comments and information on the following questions:

1. Whether exports of ANS crude oil would diminish the total quantity or quality of petroleum available to the United States;

2. Whether exports of ANS crude oil would result in changes in tanker movements out of Valdez, Alaska, and whether such movements would pose any substantial new risks to the environment beyond the risks that may exist under current tanker movements to the U.S. west coast and Hawaii;

3. Whether exports of ANS crude oil would increase imports of foreign oil impacting air quality in PADD V by affecting the level of refinery emissions;

4. Whether exports of ANS crude oil and the projected increases in Alaska and California onshore oil production would affect air quality by affecting oil field emissions and terminal facilities, and;

5. Whether exports of ANS crude oil are likely to cause sustained material oil supply shortages or sustained oil price increases significantly above world market levels that would cause sustained material adverse employment affects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories.

II. Public Hearings and Comment Procedures

The hearings will be held in Washington, D.C. on January 3, 1996; Seattle, Washington, on January 5, 1996; Anchorage, Alaska on January 8, 1996; and Bakersfield, California on January 10, 1996. The hearings will commence at 8:30 a.m. and end at 5:30 p.m. Requests to speak must be submitted by December 22, 1996. The hearing in Washington, DC will be held in the main auditorium of the Herbert Hoover Building which is located at 14th Street and Pennsylvania Avenue, NW., Washington, DC, 20230. The hearing in Seattle will be held in Building 9 Auditorium, at the NOAA Western Regional Center which is located at 7600 Sand Point Way, NE, Seattle, Washington 98115. The hearing in the auditorium of the Anchorage Museum of History and Art which is located at 121 West 7th Avenue, Anchorage, Alaska. The hearing in Bakersfield will be held at the Sheraton Bakersfield, Belridge Room, which is located at 5101 California Avenue, Bakersfield, California 93309.

The Department encourages interested participants to present their views orally at the hearings. Any person wishing to make an oral presentation at the hearings must submit a brief written request to the Department of Commerce at the address indicated in the **ADDRESSES** section of this notice. The written requests to participate in the public hearings should describe the individual's interest in the hearing and, where appropriate, explain why the individual is a proper representative of a group or class of person that has such an interest. The written request must be received no later than December 22, 1995. In addition, the request to speak should contain a daytime phone number where the person who will be making the oral presentation may be contacted before the hearing. On the day of the hearing, speakers should bring 2 copies of the summary of their oral presentation to the hearing address indicated in the **DATES** section of this notice.

Persons may submit written comments for the record if they are unable to attend the hearings.

Copies of the request to participate in the public hearings will be maintained at the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be copied in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*). Information about the inspection and copying of records may be obtained from Mr. Ted Zois, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

Each speaker may be limited to 5 or 10 minutes depending on the number of presenters. Comments may respond to the questions posed in Section I of this notice or any other related issue.

A Commerce official will preside at the hearings. Representatives from other Federal agencies participating in the review also will attend the hearings. Only those conducting the hearing may ask questions.

Any further procedural rules for the proper conduct of the hearing will be announced by the presiding officer.

Dated: December 13, 1995.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 95–30647 Filed 12–14–95; 8:45 am]

BILLING CODE 3510–DT–P

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

ACTION: Notice of initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT:

Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates.

Initiation of Reviews

In accordance with 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under § 353.22(a) (19 CFR 353.22(a)). We intend to issue the final results of these reviews not later than November 30, 1996.

Antidumping duty proceedings	Period to be reviewed
KOREA:	
Circular Welded Non-Alloy Steel Pipe	
A–580–809	
Dongbu Steel Co., Ltd	11/01/94–10/31/95
Hyundai Pipe Co., Ltd.	
Korea Iron and Steel Co., Ltd.	
Korea Steel Pipe Co., Ltd.	
Pusan Steel Pipe Co., Ltd.	

Antidumping duty proceedings	Period to be reviewed
MEXICO:	
Circular Welded Non-Alloy Steel Pipe	
A–201–805	
Hysla, S.A. de C.V. Tuberia Nacional	11/01/94–10/31/95
THE PEOPLE'S REPUBLIC OF CHINA:	
Fresh Garlic	
A–570–831	
Anhui Cao Hu Regional Foreign Trading Corp	07/11/94–10/31/95
Anhui Cereals, Oils and Foodstuffs Imp./Exp. (Group) Corp.	
Anhui Clothing Imp./Exp. Corp.	
Anhui Dong Zhi County Foreign Trade Corp.	
Anhui Medical and Health Care Products Imp./Exp. Corp.	
Anhui Su Xian Foreign Trade General Corp.	
Anhui Wu Hu Imp./Exp. Corp.	
Beijing Cereals, Oils and Foodstuffs Imp./Exp. Corp.	
Beijing Foreign Trade Foodstuffs Supply Corp.	
Beijing Jingda Development Corp.	
Beijing Native Produce Imp./Exp. Corp.	
Beijing Nanguang General Foreign Trade Corp.	
Beijing Xinkeng Imp./Exp. Co., Ltd.	
Cangshan County	
Cangshan Gadex Foods Co. Lt.	
China Cereal Heilongjiang Cereal, Oil and Food Imp./Exp. Corp.	
China Cereal International Storage and Transportation Corp. (Beijing)	
China Cereal, Oil and Food Imp./Exp. General Corp. (Beijing)	
China Cereal, Pork, Poultry and Other Animal Meat Imp./Exp. Corp.	
China Cereal, Shandong Cereal and Oil Imp./Exp. Corp.	
China Cereal Trade Development Corp. (Beijing)	
China Commerce Foreign Trade Corp. (Qing Dao)	
China C.R.C. Joint Co.	
China Export Bases Development Corp. Shaanxi Corp.	
China Export Commodity Base Construction Corp. (Beijing)	
China Export Commodity Base Construction Corp. (Saanxi)	
China Fruit, Vegetable and Seafood Imp./Exp. Corp. (Beijing)	
China Fuli Imp./Exp. Co. (Beijing)	
China Light Industrial Materials Supply and Sales General Corp. (Beijing)	
China Livestock and Poultry Associated Co.	
China Mecheco Qingdao Import and Export Corp.	
China Military Materials General Corp. (Beijing)	
China National Cereals, Oils & Foodstuffs Imp./Exp. Corp.	
China National Cereals, Oils & Foodstuffs Imp./Exp. Corp., Fujian Branch	
China National Electronics Imp./Exp. Corp.	
China National Native Produce & Animal By-Products Imp./Exp. Corp.	
China Native and Animal Products Imp./Exp. Corp.	
China New Era Corp.	
China Overseas Trading General Corp.	
China Processed Food Imp./Exp. Co.	
China Seed Corp. (Beijing)	
Chongqing Cereal, Oil and Food Products Imp./Exp. Corp.	
Da Qing Heilongjiang Foreign Trade Corp.	
Fujian Cereals, Oils and Foodstuffs Imp. & Exp. Corp.	
Green Xingye Imp./Exp. Co., Ltd.	
Guangdong Native Produce Imp./Exp. Corp.	
Guangxi Cereal, Oil, Food Products Imp./Exp. Corp.	
Guizhou Cereal, Oil and Food Products Imp./Exp. Corp.	
Haerbin Cereal, Oil and Food Imp./Exp. Corp.	
Hebei Foodstuffs Imp./Exp. Corp.	
Heilongjiang Cereal and Oil Trading Corp.	
Heilongjiang Cereals, Oils and Foodstuffs Imp./Exp. Corp.	
Heilongjiang Electrical Power Foreign Trade Corp.	
Heilongjiang Imp./Exp. Corp.	
Heilongjiang Industrial and Commercial Imp./Exp. Corp.	
Heilongjiang International Economical and Trading Corp.	
Heilongjiang International Trading and Transportation Co., Ltd.	
Heilongjiang Materials Imp./Exp. Corp.	
Heilongjiang Native and Animal Products Imp./Exp. Corp.	
Heilongjiang Nongkeng Foreign Trading Corp.	
Heilongjiang Supplier and Sales Cooperations Foreign Trade Corp.	
Heilongjiang Supplier and Sales Cooperations Foreign Trade General Corp.	
Henan Cereals, Oils & Foodstuffs Imp. & Exp. (Group) Corp.	
Henan International Counter Trade Co.	
Henan International Economic Trade Co.	
Henan Light Industrial Products & Exports Corp.	

Antidumping duty proceedings	Period to be reviewed
Henan MINMETAL Imp./Exp. Co.	
Henan Native Produce Imp./Exp. Corp.	
Henan Xin Yang Foreign Trade Corp.	
Henan Zhou Kou Regional Trading Corp.	
Henan Zhoukou Foreign Trade Company	
Hunan Cereals, Oils & Foodstuffs Imp./Exp. Corp.	
Hunan Wall Shine Imp./Exp. Corp.	
Jiangsu Cereals, Oils and Foodstuffs Imp. & Exp. (Group) Corp.	
Jiangsu Dong Tai Foreign Trading Corp.	
Jiaonan Cereal & Oil Co.	
Jiaonan Imp./Exp. Corp. (Qing Dao)	
Jinan Import/Export Corp.	
Jinan Xuijiang Food Co. Ltd.	
Jining Food Foreign Trade Co.	
Jining Imp./Exp. Co.	
Jining Medicines & Health Products Imp./Exp. Co.	
Jinxiang	
Jinxiang Foreign Trade Co.	
Jinxiang Yinfeng Co.	
Kai Feng Henan Imp./Exp. Corp.	
Liaoning Food Imp./Exp. Corp.	
Lianyungang Wanrun Foodstuff Co.	
Ling Yi Shangdong Imp./Exp. Corp.	
Linyi Cangshan Huangpu Refrigeration Plant	
Linyi Foreign Trade Refrigeration Plant	
Longkou Fook Huat Tong Kee Refrigeration Co., Ltd.	
Longkou Fufazhongji Refrigeration Co., Ltd.	
Luo Yang Foreign Trade Corp.	
Luxing Industrial Co. Ltd.	
Mou Ping Shandong Foreign Trade Corp.	
Nantong Tongming Food Co.	
Nanjing Cereals, Oils & Foodstuffs Imp./Exp. Corp.	
Ning Bo Cereal, Oil and Food Imp./Exp. Corp.	
OAG International Inc.	
Panyu Fruits & Vegetables Import & Export Corporation	
Pingdu Resource Cereal & Oil Co.	
Qian An Hebei Imp./Exp. Corp.	
Qing Dao Imp./Exp. Corp.	
Qingdao Cereals, Oils & Foodstuffs Imp./Exp. Corp.	
Qinghuangdao China Cereal Products Imp./Exp. Corp.	
Quing Dao Native and Animal Products Imp./Exp. Corp.	
Saanxi Cereal, Oil and Food Imp./Exp. Corp.	
Saanxi Fuyuan Imp./Exp. Corp.	
Saanxi Imp./Exp. Corp.	
Saanxi Native Products Imp./Exp. Corp. (Xi An)	
Saanxi Xian Yang Imp./Exp. Corp.	
Shandong Commercial Group General Corp.	
Shandong Construction Material Imp./Exp. Co.	
Shandong Dongyue General Corp.	
Shandong Economic Cooperation Co.	
Shandong Foodstuffs Imp./Exp. Corp.	
Shandong Foreign Trade Co.	
Shandong Lai Wu Imp./Exp. Corp.	
Shandong Linju County	
Shandong Medicines & Health Products Imp./Exp. Co.	
Shandong Native Products Imp./Exp. Corp.	
Shandong Ri Zhao Imp./Exp. Corp.	
Shandong Tai An Imp./Exp. Corp.	
Shang Qiu Henan Foreign Trade Corp.	
Shanghai Foodstuffs Imp./Exp. Corp.	
Shanghai New Dragon Imp./Exp. Co., Ltd.	
Shengyu (Tianjin) Engineering Services Co., Ltd.	
Shenzhen Wanghai International Trading Corp.	
Sichuan Native Products Imp./Exp. Corp.	
Sinjiang Jimusaer County Foreign Trade Co.	
Tai Chang Foreign Trade Corp.	
Taicang Foreign Trade Company	
Tiajin Food Imp./Exp. Group, Ltd.	
Tiajin Foreign Trade General Corp.	
Tibet Native and Animal Products Imp./Exp. Corp. (La Sha)	
Top Pearl Ltd.	
Weishan County Foreign Trade Co.	
Wing Man Trading Co. Ltd.	

Antidumping duty proceedings	Period to be reviewed
Wu Han China Cereal Imp./Exp. Corp.	
Huhu Imp./Exp. Co.	
Xi An Native and Animal Products Imp./Exp. Corp.	
Xiamen Huashun Food Indust. Ltd.	
Xin Xian Henan International Trading Corp.	
Xin Xiang Henan International Trading Corp.	
Xinyang Prefectural Foreign Trade Corporation of Henan Province	
Xing Tai, Hebei Imp./Exp. Corp.	
Xinjiang Cereal, Food, Medical Products Imp./Exp. Corp. (Urumuqi)	
Xuzhou Foreign Trade Corp.	
Xuzhou Cereals, Oils and Foodstuffs Imp. & Exp. Corp.	
Xuzhou Foreign Trade Company	
Yantai Development Zone Imp./Exp. Co.	
Yantai Foodstuffs Imp./Exp. Corp.	
Yantai Hualin Food Industrial Co. Ltd.	
Yantai Native Produce & Animal By-Products Imp./Exp. Corp.	
Zhonghai Trading (Chongqing) Overseas Trading Corp.	
Zhongji Jiahua Imp./Exp. Corp.	
Zhongyuan International Economic Trade Co.	
Zhun Hua Hebei Imp./Exp. Corp.	
Zaoshuang MINMETAL Imp./Exp. Corp.	
All other exporters of fresh garlic from the People's Republic of China are conditionally covered by this review.	
ARGENTINA:	
Oil Country Tubular Goods	
C–357–403	
Siderca S.A.I.C.	01/01/94–12/31/94
Suspension Agreements SINGAPORE:	
Certain Refrigeration Compressors	
C–559–001	04/01/94–03/31/95

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: December 8, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–30607 Filed 12–14–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–351–605]

Silicon Metal From Argentina; Final Results of Antidumping Duty Administrative Review and Termination in Part

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review, and Termination in Part.

SUMMARY: On August 9, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on silicon metal from Argentina, and its termination in part (60 FR 40566). Since petitioners withdrew their request for review of Andina Electrometalurgical (Andina) within 90 days from the date of publication of the notice of initiation in accordance with 19 CFR 353.22(a)(5), and no other party requested a review of Andina, we terminated the review with respect to this firm. This review covers Silarsa, S.A. (Silarsa), a manufacturer/exporter of this merchandise to the United States. We have now completed this review and have continued to assign to Silarsa the BIA rate of 24.62 percent for the period September 1, 1993 through August 31, 1994.

We gave interested parties the opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have concluded that Silarsa's margin should remain at 24.62 percent

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1995, the Department published in the Federal Register (60 FR 40566) the preliminary results of its administrative review of the antidumping duty order on silicon metal from Argentina (56 FR 48779, September 26, 1991). The Department has not completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by this administrative review are shipments of silicon metal from Argentina. During this less-than-fair-value (LTFV) investigation, silicon metal was described as containing at least 96.00, but less than 99.99 percent silicon by weight. In response to a request by petitioners for clarification of the scope of the antidumping duty order on silicon metal from the People's Republic of China (PRC), the Department determined that material with a higher aluminum content containing between 89 and 96 percent silicon by weight is the same class or kind of merchandise

as silicon metal described in the LTFV investigation (Final Scope Rulings-Antidumping Duty Orders on Silicon Metal from the People's Republic of China, Brazil, and Argentina (February 3, 1993)). Therefore, such material is within the scope of the orders on silicon metal from the PRC, Brazil, and Argentina. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) and is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon metal and provided for in subheading 2804.61.00 of the HTS) is not subject to this order. The HTS subheadings are provided for convenience and U.S. Customs Service purposes only. The written description remains dispositive.

This review covers one manufacturer/exporter of the subject merchandise to the United States, Silarsa, and the period September 1, 1993 through August 31, 1994.

Best Information Available (BIA)

In accordance with section 776(c) of the Tariff Act, we have determined that the use of BIA is appropriate for Silarsa. Our regulations that is selecting BIA we may take into account whether a party refuses to provide information (19 CFR 353.37(b)). Generally, whenever a company refuses to cooperate with the Department or otherwise significantly impedes the proceeding, as Silarsa did here, the Department uses as BIA the highest rate for any company for the same class or kind of merchandise from the current or any prior segment of the proceeding. When a company substantially cooperates with our requests for information, but fails to provide all the information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate (including the ''all others'' rate) ever applicable to the firm for the same class or kind of merchandise from the same country from the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in the review of any firm for the same class or kind of merchandise from the same country. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et. al.; Final Results of Antidumping Administrative Review, 57 FR 28360, 28379 (June 24, 1992), and *Allied-Signal Aerospace Co. v. United States,* 996 F.2d 1185 (Fed. Cir. 1993).

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from American Silicon Technologies, Elkem Metals Company, Globe Metallurgical, Inc., and SKW Metals & Alloys, Inc., the petitioners, and Silarsa, S.A., a respondent. On September 15, 1995, we received written rebuttal comments from petitioners and Hunter Douglas, an importer of silicon metal from Argentina and an interested party as defined in section 771(9)(A).

Comments on the Use of BIA

The petitioners assert that Silarsa's failure to participate in this third administrative review occurred within the context of a continuing pattern of noncooperation by Silarsa in this proceeding, and they point out that their allegation of sales below cost with respect to Silarsa in the 1991–1992 period of review (the first administrative review) precipitated Silarsa's withdrawal. The Department subsequently assigned a BIA rate of 54.67 percent, which was computed from constructed value information submitted by the petitioners and Silarsa's reported U.S. sales data. The petitioner state that the Department explained in the final results of that review that it could not ''presume that the highest prior margins {were} the best information available and that following the two-tier methodology would be significant to induce the respondent to cooperate.'' See Silicon Metal from Argentina; Final Results of Antidumping Duty Administrative Review, 58 FR 65336 (December 14, 1993) (Argentina Silicon Metal I). On remand, the Department recalculated the margin taking into account Silarsa's ministerial error allegations, and derived a margin of 24.62 percent which was affirmed by the Court of International Trade (CIT) on March 24, 1994.

The petitioners note that Silarsa failed to respond by the deadline date to the Department's questionnaire for the second administrative review, covering the period September 1, 1992 through August 31, 1993, and has had no subsequent contact with the Department with respect to the second administrative review.

For this third administrative review the petitioners reiterate their objection to Silarsa's request to be ''excused from responding to'' the Department's questionnaire because it (1) exported only 331 metric tons of subject imports during the period of review (POR) in October 1993; (2) had stopped manufacturing silicon metal in January 1994, and had no near-term plans to resume production; (3) would contact the Department should it resume production; and (4) did not have the personnel to prepare the response. See Letter from Alberto Stein, President, Silarsa, to the Department of Commerce (December 29, 1994) Letter from Silarsa) on file in Central Records, Room B–099. Petitioners note that PIERS data and Census Bureau import data indicate that Silarsa did import silicon metal into the United States during the POR and that a temporary cessation of production does not relieve Silarsa of its obligation to respond to the questionnaire.

Petitioners state that to be an effective tool, the application of BIA to a recalcitrant party must result in a margin that is less desirable to the respondent than that which would have been obtained had the party chosen to cooperate. Citing *N.A.R., S.p.A.* v. *United States*, 741 F.Supp. 936 (CIT 1990), in support of their argument, petitioners assert that the best information rule may be used to prevent a respondent from controlling the results of an antidumping investigation ''by selectively providing the ITA with information'', (*Id.* at 941). Petitioners state that the Department normally includes within the pool of BIA rates (1) the highest rate assigned to any company in a previous review of investigation and (2) the highest rate for a responding company with shipments during the review period. Petitioners contend, however, that the Department has gone beyond these rates when the higher of the two was not ''sufficiently adverse to induce respondents to submit timely, accurate, and complete responses'' (Sodium Thiosulfate From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review, 57 FR 58792 (December 11, 1992) (PRC Sodium Thiosulfate)).

According to petitioners, Silarsa's failure to cooperate in the first, second, and in this third administrative review demonstrates that the current rate, the BIA rate from the first administrative review, is not sufficiently adverse to induce Silarsa's cooperation. Since the rates established in the investigation and prior completed reviews are no more adverse than the 24.62 percent deposit rate currently in effect, the petitioners assert that the Department must go beyond those rates to find a rate sufficiently adverse to induce cooperation. Citing Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Final Results of Antidumping Duty Administrative Review, 56 FR 47454 (September 19,

1991) (Canadian Replacement Parts) and *Krupp Stahl A.G.* v. *United States,* 822 F. Supp. 789 (CIT 1993) (Krupp Stahl) as precedent, the petitioners believe the Department must expand its choices and include the petition rates in its BIA pool.

The petitioners point out that in Certain Malleable Cast Iron Pipe Fittings From Brazil; Final Results of Antidumping Duty Administrative Review, 60 FR 41876 (August 14, 1995) (Brazil Cast Iron Pipe Fittings) the Department assigned as BIA the average of the petition rates, as adjusted by the Department, reasoning that

> [in] not responding to our requests for information, [the respondent] could be relying upon our normal BIA practice to lock in a rate that is capped at its LTFV rate. Such a capped BIA rate would allow [the respondent] to practice injurious price discrimination to a greater degree than at the time of the LTFV investigation without fear of adverse consequences. With such a capped rate, [the respondent] would no longer have an incentive to participate in an administrative review which would determine the extent to which [the respondent] is actually dumping subject merchandise in the United States.

The petitioners state that similarly in this review Silarsa's current BIA rate is the highest rate established for any respondent in this or any prior segment of the proceeding. Therefore, in the petitioners' opinion, the Department should assign to Silarsa, as BIA, the average of the petition rates, 81.31 percent, or, at a minimum, the lowest petition rate of 49.35 percent.

Silarsa counters that it generally supports the Department's preliminary results and urges the Department to assign to Silarsa in the final results a rate no greater than the highest rate ever established by the Department in Argentine Silicon Metal I, *i.e.,* 24.62 percent. Silarsa maintains that the Department's use of this rate as BIA is firmly rooted in established agency practice and is commonly referred to as the two-tiered BIA methodology. In this case the Department uses as BIA the highest previous margin ever established by the Department in Silicon Metal from Argentina. Silarsa cites *Allied Signal Co.* v. *U.S.* (996 F.2d 1185, 1192 (Fed. Cir. 1993), aff'd, 28 F.3d 1188, cert denied, 115 S. Ct. 722(1995)) as evidence that the Department's two-tiered BIA methodolgy and its application in administrative reviews have been upheld by the Court of Appeals for the Federal Circuit.

Silarsa dismisses the petitioners' claim that Silarsa's failure to cooperate in the second and third administrative reviews demonstrates that the current rate is not sufficiently adverse to induce Silarsa's cooperation, contending that this conclusion is clearly refuted by the record. In fact, Silarsa maintains that the 24.62 percent margin constitutes an insurmountable barrier, which precluded Silarsa from participating in the U.S. silicon metal market, and precipitated the company's decision to cease production of silicon metal effective January 1, 1994. According to Silarsa, economic constraints and the lack of a sufficient administrative structure have precluded Silarsa's participation in the administrative proceedings, not the petitioners' purported ineffectiveness of the margin. Silarsa characterizes the petitioners' claim that the use of the 24.62 percent margin as BIA would ''reward'' Silarsa for its inability to participate in the administrative proceedings as baseless, stating that this margin is not ''neutral or even favorable'' to Silarsa.

Silarsa contends that the Department has no basis to assign to Silarsa a rate greater than the 24.62 percent rate determined to constitute BIA in the first administrative review. Silarsa asserts that the petitioners' cite to Canadian Replacement Parts to support the application of a rate from the petition as the BIA rate for purposes of an administrative review is incorrect. In that case, the Department ''included the petition rate in the BIA pool,'' as petitioners contend, but ultimately rejected this rate and applied the BIA rate in effect for the respondent in a preceding review.

Silarsa states that the petitioners' cite to PRC Sodium Thiosulfates is ''equally inapt'' because, unlike that case where the petitioner placed on the record documentation indicating that costs and prices had changed substantially since the investigation, the petitioners in this case have not introduced evidence of increased costs or prices that might warrant the application of a higher dumping margin. Silarsa also rejects the petitioners' cite to Krupp Stahl, where the CIT upheld the Department's choice of the rate established in the preliminary phase of the LTFV investigation as BIA. Silarsa points out that the administrative review at issue in Krupp Stahl was the first review and the only BIA alternatives available to the Department were the petition-based preliminary LTFV rate for the respondent and the respondent's own final LTFV rate. The Court specified that ''under the circumstances of limited BIA data in [that] review,'' the Department's use of the only other information available, *i.e.,* the preliminary LTFV rate, was not arbitrary. Silarsa argues that this is the third administrative review of silicon metal from Argentina and the information available to the Department is not ''limited.'' In addition, Silarsa notes that the rate used by the Department as BIA in Krupp Stahl was a rate established in the preliminary LTFV investigation, not a petition rate as proposed by the petitioners in this case.

Silarsa also distinguishes the facts in Brazil Cast Iron Pipe Fittings from those in this review. In Brazil Cast Iron Pipe Fittings there was only one respondent, with a relatively low margin, who failed to respond to the Department's questionnaire subsequent to the initial LTFV investigation. The petitioner argued that so long as the company chose not to respond to the Department's questionnaire, the relative low margin for the respondent would not change under the Department's regular BIA practice. Silarsa points out that due to the ''unusual situation'' in that case the Department deviated from its ''normal BIA practice,'' the two-tiered methodology. Silarsa argues that this ''unusual situation'' is not applicable in this review, where there are two companies, there is more than one rate in the selection pool, and the rate currently in effect for Silarsa, *i.e.,* 24.62 percent, is a BIA rate itself and is more adverse and prejudicial than the calculated rate in Brazil Cast Iron Pipe Fittings.

Silarsa concludes that the petitioners have failed to establish a reasonable basis for the Department to deviate from its accepted, established methodology to determine a BIA rate for Silarsa. Silarsa, therefore, urges the Department to utilize as BIA for Silarsa in the final results of this administrative review a rate no greater than the BIA rate currently in effect for Silarsa, *i.e.,* 24.62 percent.

In rebuttal the petitioners argue that Silarsa's characterization of its current BIA rate as ''extremely adverse and prejudicial'' does not alter the fact that Silarsa failed to cooperate in this review; this noncooperation demonstrates that the current rate is not sufficiently adverse or prejudicial to achieve the central purpose of the BIA rule which is to provide a strong enough incentive to cooperate that the respondent will submit the information necessary to determine the actual margin of dumping on its U.S. sales. The petitioners urge the Department not to rely upon selected, unverified facts submitted by an uncooperative respondent as the basis for a decision benefiting that respondent. They maintain that the most important of the selective facts submitted by Silarsa in its

brief was its contention that it had made only one exportation to the United States during the POR and, therefore, its current rate should not be increased. The petitioners claim that the only reason Silarsa provided any information in this review regarding its shipments to the United States is the petitioners' challenge to Silarsa's erroneous claim that it had made only one shipment of silicon metal to the United States during the POR. According to the petitioners, the fact that Silarsa is willing to accept the 24.62 percent rate rather than provide the requested information demonstrates that the rate is neither adverse not prejudicial.

The petitioners argue that since Silarsa is the only company being reviewed in this administrative review, under the Department's normal methodology Silarsa's current rate is the highest possible BIA rate. The petitioners maintain that it is the Department's practice to go beyond the rates specified by its normal methodology when the highest of those rates is not ''sufficiently adverse to induce respondents to submit timely, accurate, and complete responses'' (PRC Sodium Thiosulface, 57 FR at 58792). Since the current rate has proven to be too low to induce Silarsa's cooperation, the petitioners conclude that, in accordance with Krupp Stahl, the Department must assign a higher BIA rate, the petition rate, as BIA for Silarsa. The petitioners cite Brazil Cast Iron Pipe Fittings, 60 FR at 41878, wherein the Department reasoned that ''such a capped BIA rate would allow (the respondent) to practice injurious price discrimination of a greater degree than at the time of the LTFV investigation without fear of adverse consequences'' (*id.*, 41878), as precedent for the Department's use of petition-based rates when the only available rate under the Department's standard practice is the respondent's own LTFV margin. Since Silarsa's current BIA rate is the highest rate established for any respondent in this or any prior segment of the proceeding, the petitioners contend that Silarsa's rate will be capped at the current rate. Therefore, the petitioners reiterate their contention that the Department should assign to Silarsa, as BIA, the average of the petition rates (81.31%) or, at a minimum, the lowest petition rate (49.35%).

Hunter Douglas agrees with Silarsa that there is no reason for the Department to deviate from its two-tiered BIA methodology in this review, stating that the petitioners cannot realistically claim that the 24.62 percent rate is not sufficiently adverse when it has prevented Silarsa from exporting to the Untied States and also has induced Silarsa to discontinue production of silicon metal altogether.

Hunter Douglas argue that the sole impact of an increase in the BIA rate would be to punish unrelated U.S. importers who must actually pay the antidumping duties even though they have no control over foreign exporters or their decisions about whether to cooperate in the Department's antidumping administrative reviews. Therefore, Hunter Douglas urges the Department to apply a BIA rate no higher than 24.62 percent to Silarsa's merchandise in this review.

Department's Position: We agree with Silarsa. In the preliminary results of this administrative review we followed our established two-tiered methodology, as set out above, and assigned to Silarsa, a noncomplying respondent, the highest rate found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV investigation or a prior administrative review. As the petitioners explain in their brief, in the final results of Argentina Silicon Metal I we assigned to Silarsa, as BIA), a rate of 54.67 percent, computed using constructed value information submitted by petitioners and based on Silarsa's financial statements and its reported U.S. sales data. On remand, the Department recalculated this margin, taking into account ministerial error allegations filed by Silarsa, and derived a BIA rate of 24.62 percent which was subsequently affirmed by the CIT on March 24, 1994.

We disagree with the petitioners that the 24.62 percent BIA rate assigned to Silarsa in the first administrative review was not sufficiently adverse to induce Silarsa's cooperation in the second and third administrative reviews and, therefore, a more adverse rate should be assigned in this review to induce the desired cooperation. The BIA rate from the first administrative review appears to have precluded Silarsa's participation in the U.S. silicon metal market (see Letter from Silarsa). Accordingly, there is no need to resort to any higher BIA rate, as the petitioners suggest.

The petitioners are correct in their assertion that the Department tries to select an appropriate BIA rate to encourage future compliance with the Department's requests for information. However, in the present case, Silarsa maintains that it has ceased producing and exporting the subject merchandise. As such, in this instance, Silarsa is in no way advantaged by the present rate, and use of an even higher BIA rate would not induce Silarsa to respond to the Department's questionnaire.

The petitioners' reliance on Canadian replacement Parts and Krupp Stahl to support the use of the petition rates for BIA is misleading. In Canadian Replacement Parts we considered the petition rate in the pool of possible BIA rates, but ultimately rejected the rate alleged in the petition as a BIA rate because the respondent did make ''several attempts to respond to our request for data'' and ''the selection of the most adverse BIA rate {was} not warranted under {those} circumstances'' (see Canadian Replacement Parts, 56 FR 47454), In Krupp Stahl the CIT concluded that the Department's choice of BIA (*i.e.*, the preliminary LTFV margin) was ''within its discretion'' and ''in accordance with law'' given the ''special circumstance of {that} case, that is, Krupp's destruction of the records during the process of litigation and the limited BIA data available for use'' (*Id.*, 822 F. Supp., at 796). There are no parallel ''special circumstances'' in this review. There were special circumstances in the first administrative review which persuaded the Department to go beyond the two-tiered BIA methodology and use the rate the petitioners derived from Silarsa's own financial statements and submitted sales information. That rate is currently the highest rate for any respondent during the investigation and in subsequent administrative reviews. There are no special circumstances in this third administrative review that warrant rejecting that rate and going beyond the standard two-tiered BIA methodology.

The petitioners' fear that the Department's use of the traditional two-tiered methodology in this instance would result in a ''capped BIA rate'' which ''would allow {the respondent} to practice injurious price discrimination to a greater degree than at the time of the LTFV investigation without fear of adverse consequences'' (Brazil Cast Iron Pipe Fittings, 60 FR at 41876) is unwarranted. While the Department did find it appropriate to use a higher petition-based rate as BIA in the Brazil Cast Iron Pipe Fittings review, there is no need to do so here. Unlike Brazil Cast Iron Pipe Fittings, there are other exporters of the subject merchandise which may receive a higher rate in subsequent proceedings. Moreover, as discussed above, Silarsa attests that it is no longer producing or exporting the subject merchandise. There is no evidence to indicate that,if Silarsa resumes production, the current rate is insufficient to ensure Silarsa's cooperation in a subsequent review. Therefore, we believe that Silarsa's BIA

rate from the first administrative review is sufficient for the purposes for which BIA is intended. There is no indication that Silarsa is engaging in injurious price discrimination to a greater degree than at the time of the first administrative review. Should such evidence come to light in a future review, and the Department determines that a BIA rate is appropriate, it is not precluded from evaluating the rate in order to assign one that would accomplish the purpose for which a BIA rate is intended.

Finally, we also disagree with the petitioners' argument that PRC Sodium Thiosulfate supports the conclusion that a higher BIA rate is warranted in this instance. In PRC Sodium Thiosulfate the Department reconsidered the BIA rate because the petitioner presented evidence that costs and prices in the industry had changed substantially since the investigation, making the BIA rate from the investigation ''no longer sufficiently adverse.'' See PRC Sodium Thiosulfate: Final Results of Antidumping Duty Administrative Review, 58 FR 12934 (March 8, 1993). That is not the case in this review. There is no evidence on the record that costs or prices have changed, let alone changed substantially, that would warrant a reconsideration of the current BIA rate assigned to Silarsa.

As explained above, the present BIA rate is sufficiently adverse to Silarsa. Therefore, since we see no reason to deviate from our well-established two-tiered BIA methodology in this review, we have continued to use 24.62 percent as Silarsa's first-tier BIA rate for this third administrative review.

Final Results of Review

As a result of comments received, we have not revised our preliminary results. Therefore, we determine that the following margin exists for the period September 1, 1993 through August 31, 1994:

Manufacturer/Exporter	Margin (percent)
Silarsa, S.A.	24.62

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company, Silarsa, will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will be 17.87 percent, the ''all other'' rate established in the final Results of Redetermination Pursuant to Court Remand, *American Alloys, Inc.* v. *United States*, Ct. No. 91–10–00782, p. 4 (April 7, 1995).

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

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibilities concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO. Timely written notification of return/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 administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)(B)) as amended and 19 CFR 353.22.

Dated: December 7, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–30606 Filed 12–14–95; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 120895A]

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 its Shrimp Advisory Panel (AP).

DATES: The meeting will be held on January 9, 1996 beginning at 9:00 a.m. and will conclude at 4:30 p.m.

ADDRESSES: The meeting will be held at the New Orleans Airport Hilton Hotel, 901 Airline Highway, Kenner, LA; telephone: 504–469–5000.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Antonio B. Lamberte, Economist; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP will review scientific information on the cooperative shrimp closure with the State of Texas, royal red shrimp regulatory amendment (tentative) and comparison of shrimp vessel effort and bycatch characterization effort. The AP consists principally of commercial shrimp fishermen, dealers and association representatives. The AP will develop recommendations to the Council regarding the extent of the closure of Federal waters off Texas in 1996 concurrent with the closure of Texas waters. If Amendment 8 to the Shrimp Fishery Management Plan is approved, the AP will review a regulatory amendment that would provide a procedure for setting a total allowable catch of royal red shrimp. The AP will also develop recommendations regarding the level of effort in the shrimp fishery after reviewing information that compares levels of effort collected using the current method and effort collected from the bycatch characterization study.

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, 1996.

Dated: December 8, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–30600 Filed 12–14–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

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

ACTION: Proposed additions to Procurement List.

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

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 15, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

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

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

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

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

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

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

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

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

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

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

Commodities

Sponge, Olive Drab

7920–01–383–7936
NPA: Mississippi Industries for the Blind Jackson, Mississippi

Undershirt, Man's Brown

8420–01–112–1472
8420–01–112–1473
8420–01–112–1474
8420–01–112–1475
8420–01–112–1476
8420–01–112–1477
8420–01–112–1478
8420–01–112–1479
(1,600,000 annually in any combination of the above NSNs)
NPA: Mississippi Industries for the Blind, Jackson, Mississippi; BESB Industries, West Hartford, Connecticut

Vest, Load Bearing Equipment

8465–00–NSH–0014 thru -0028
NPA: Chautauqua County Chapter, NYSARC Jamestown, New York

Service

Janitorial/Custodial

Camp H. M. Smith
Oahu, Hawaii
NPA: Opportunities for the Retarded, Inc. Wahiawa, Hawaii

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–30609 Filed 12–14–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

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

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 15, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

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

SUPPLEMENTARY INFORMATION: On September 29, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 50559) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

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

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

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

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

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

Basin, Wash

6530–01–075–2723

Insert, Foam, Laminated

8135–00–NSH–0004

(Requirements for the Bureau of Mint, Washington, DC.)

This action does not affect current contracts awarded prior to the effective

date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–30608 Filed 12–14–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

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

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 15, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

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

SUPPLEMENTARY INFORMATION: On October 30, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 55244) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

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

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

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

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

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

Targets

6920–00–Z85–9240
6920–00–Z85–9241
6920–00–Z85–9248
6920–00–Z85–9249
6920–00–Z86–9768
6920–00–Z86–9769
6920–00–Z86–9770
6920–00–Z88–2857
6920–01–Z87–6646
6920–01–Z87–6649
6920–00–Z85–9237
6920–00–Z85–9236
6920–01–Z88–2858
6920–01–Z88–2859
6920–01–NSH–9018
6920–01–Z88–2861
6920–01–Z87–6650
6920–01–Z88–2862
6920–01–NSH–9017
6920–01–NSH–9019
6920–01–Z88–2869

(Requirements for Fort Stewart, Georgia only.)

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

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–30657 Filed 12–14–95; 8:45 am]

BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Application of the Chicago Board of Trade for Designation as a Contract Market in Futures and Options on the CBOT Latin American Brady Bond Index and the CBOT Mexico Brady Bond Index and Application of the Chicago Mercantile Exchange for Designation as a Contract Market in Futures and Options on the CME Mexican Brady Bond Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Board of Trade (CBOT or Exchange) has applied for designation as a contract market in futures and futures options on the CBOT Latin American Brady Bond Index and the CBOT Mexico Brady Bond Index. The Chicago Mercantile Exchange (CME) has applied for designation as a contract market in futures and futures options on the CME Mexican Brady Bond Index.

The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals 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 16, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Reference should be made to the CBOT Latin American Brady Bond Index and the Mexico Brady Bond Index contracts or to the CME Mexican Brady Bond Index contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, Washington, DC, 20581, telephone 202–418–5277.

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, 21st Street Washington, D.C. 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) 418–5097.

Other materials submitted by the CBOT and CME in support of the applications for contract market designation 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 (1987)), 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 the 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 CBT and CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre,

21st Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on December 8, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–30562 Filed 12–14–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 14 December 1995.

Time of Meeting: 1300–1700.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board's Research and Development (R&D) Sub-panel for the Ad Hoc Study on ''Reengineering the Acquisition and Modernization Processes of the Institutional Army'' will meet for briefings and discussions on the R&D processes and ways to improve efficiency. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–30542 Filed 12–14–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/JA(EU)-77, for the transfer of 14 grams of uranium containing 0.588 grams of the isotope uranium-235 (4.2 percent enrichment) and 8.5 grams of uranium containing 0.357 grams of the isotope uranium-235 (4.2 percent enrichment) from EURATOM to Japan for use in calibration of mass spectrometers.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–30588 Filed 12–14–95; 8:45 am]

BILLING CODE 6450–01–P

Draft Environmental Impact Statement for the Plutonium Finishing Plant Stabilization, Hanford Site, Richland, Benton County, WA, Notice of Availability and Announcement of Public Hearing

AGENCY: Department of Energy.

ACTION: Extension of comment period.

SUMMARY: The Department of Energy (DOE) announced the availability of the Draft Environmental Impact Statement (EIS) for the Plutonium Finishing Plant (PFP) Stabilization, Hanford Site, Richland, Benton County, in the Federal Register on December 5, 1995 (60 FR 62244). This announcement extends the date for the end of the comment period provided in that Federal Register announcement.

DATES: DOE invites comments on the Draft PFP Stabilization EIS (DOE/EIS–0244–D) from all interested parties. Written comments or suggestions regarding the adequacy, accuracy, and completeness of the Draft EIS will be considered in preparing the Final EIS and should be submitted (postmarked) by January 23, 1996. Written comments received after that date will be considered to the degree practicable.

ADDRESSES: Written comments or questions concerning the Draft PFP Stabilization EIS should be directed to: Mr. Ben F. Burton, U.S. Department of Energy, Richland Operations Office, Attn: PFP Stabilization EIS, P.O. Box 550, MSIN B1–42, Richland, Washington 99352, (509) 946–3609, (800) 249–8181.

Ben F. Burton,

PFP Document Manager.

[FR Doc. 95–30589 Filed 12–14–95; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Eastern Idaho Community Reuse Program

AGENCY: Department of Energy, Idaho Operations Office.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy's (DOE) Office of Worker and Community Transition through the DOE Idaho Operations Office intends to negotiate and award on a noncompetitive basis, Cooperative Number DE–FG07–96ID13398 to Eastern Idaho Economic Development Council (EIEDC) of Idaho Falls, Idaho. The award has an estimated overall total value of up to $10,000,000, of which DOE's share of the estimated two year award will be approximately 100%. The award will assist the efforts of the EIEDC to transition the economy of Eastern Idaho away from a significant level of dependency on the Idaho National Engineering Laboratories (INEL) through diversification.

FOR FURTHER INFORMATION CONTACT: Dallas L. Hoffer, Contract Specialist, (208) 526–0014; U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

SUPPLEMENTARY INFORMATION: The non-competitive award justification is Criterion (A) of 10 CFR 600.7(b)(2)(i), as follows:

(A) The activity to be funded (EIEDC) is necessary for the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on continuity or completion of the activity. The EIEDC was established specifically for the purpose of formulating and implementing strategies to confront the impacts of the changing missions at the INEL.

Statutory Authorities for the new award are Public Laws 95–224 and 97–258.

PROCUREMENT REQUEST NUMBER: 07–96ID13398.000.

Dated: December 6, 1995.

Brad G. Bauer,

Acting Director, Procurement Services Division.

[FR Doc. 95–30590 Filed 12–14–95; 8:45 am]

BILLING CODE 6450–01–P

Privacy Act of 1974; Amendment of Existing System of Records

AGENCY: Department of Energy (DOE).

ACTION: Amendment of one existing system of records.

SUMMARY: Federal Agencies are required by the Privacy Act of 1974 (Pub. L. 93–579, 5 U.S.C. 552a) to publish notice in the Federal Register of proposed amendments to the routine uses of existing systems of records. The Department of Energy proposes to amend the routine uses of one of its systems of records, DOE–15, Payroll and Pay-Related Data For Employees Of Terminated Contractors, to permit disclosure of certain categories of records in the system for epidemiological and other health studies and surveys and to health studies advisory entities as routine uses of these categories of records.

DATES: The proposed revisions will become effective without further notice 40 days after publication in the Federal Register (January 24, 1996), unless comments are received on or before that date that would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Written comments should be directed to the following address: Director, FOIA/Privacy Act Division, Office of Executive Secretariat, U.S. Department of Energy, HR–78, 1000 Independence Avenue, SW., Washington, DC 20585. Written comments will be available for inspection at the above address between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: (1) Heather Stockwell, Acting Director, Office of Epidemiologic Studies, EH–62, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, (301) 903–3721 or (2) GayLa D. Sessoms, Director, FOIA/Privacy Act Division, HR–78, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5955 or (3) Harold Halpern, Office of General Counsel, GC–80, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7406.

SUPPLEMENTARY INFORMATION: The Department of Energy proposes to amend the routine uses of one of its systems of record, DOE–15, Payroll and Pay-Related Data For Employees Of Terminated Contractors, to permit disclosure of certain categories of records in this system for epidemiological and other health studies and surveys and to health studies advisory entities as routine uses of these categories of records.

Previously, the Department amended 12 other systems of records to permit disclosure of all categories of records in the 12 systems for health studies and to health studies advisory entities. See 60 FR 33510 (June 28, 1995). The Department received no comments concerning that proposal. The currently proposed amendments, as detailed below, would permit only certain categories of records in this system to be disclosed for health studies and to advisory entities.

Categories of records in DOE–15 to be made available for the new routine uses include employment history, job titles, and discrete portions of payroll data reflecting attendance, illness, or other matters of the type described above. Records that could reflect adversely on their subjects, such as disciplinary actions, reprimands, admonitions, adverse actions, performance appraisals, security infraction notices and similar matters, will not be made available for the proposed new routine uses.

The Department's epidemiology and health surveillance program was established to determine the health effects of the Department's activities on workers and populations having access, or in proximity, to the Department's facilities. Epidemiological studies are an important means of determining the status of, and improving, public health. Epidemiological studies permit the scientific evaluation of the effects of exposure to potentially harmful materials by determining and quantifying health effects associated with such exposures. Health surveys, which are used to assess immediate health issues, are designed to discover the occupational source of outbreaks of illness, injury, or death, and to describe the extent of exposure to specific substances at a single point in time. Surveillance is used to identify new and emerging health problems by monitoring groups of workers, who have the same job or exposures, for changes in their illness and injury patterns over time.

The proposed health study routine use amendments to the system will assist the Department in studying and monitoring individual employee and aggregate population health risks from exposures to radiation or other hazards that may have occurred as a result of the Department's operations.

Pursuant to Memoranda of Understanding with the Department of Health and Human Services (''HHS''), and the Agency for Toxic Substances and Disease Registry (''ATSDR''), studies, surveys and surveillances will be conducted for DOE by units of the Public Health Service, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and ATSDR, and their contractors, grantees, and cooperative agreement holders. States also may perform studies as the Department's or the Department of Health and Human Services' contractors, grantees, or cooperative agreement holders.

The studies are focussed on a variety of areas that are important for assessing the real and potential health risks to workers and the public resulting from the Department's energy-related technologies and activities. The studies should provide information that is necessary for long-range energy planning pursuant to continued development of the national energy strategy. The health studies include all Department facilities and workers and other special populations that have relevance to the Department's mission.

The proposed new routine uses of records in this system of records are:

(1) Discrete portions of payroll and pay related data reflecting employment history, date of birth, job titles, job descriptions, attendance, accidents, illnesses, medical conditions, exposure to toxic agents and similar matters, may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components. Records that may reflect adversely upon individuals, such as records concerning disciplinary actions, reprimands, admonitions, adverse actions, performance appraisals, security infraction notices, supervisor-employee discussions, and similar matters, will not be made available for the proposed new routine uses.

(2) Subject to the same Privacy Act limitations applicable to employees of the Department, discrete portions of payroll and pay related data reflecting employment history, date of birth, job titles, job descriptions, attendance, accidents, illnesses, medical conditions, exposure to toxic agents and similar matters, may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record: to Federal, State, and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes. Records that may reflect adversely upon individuals, such as records concerning disciplinary actions, reprimands, admonitions, adverse actions, performance appraisals, security infraction notices, supervisor-employee discussions, and similar matters, will not be made available for the proposed new routine uses.

(3) Discrete portions of payroll and pay related data reflecting employment history, date of birth, job titles, job descriptions, attendance, accidents, illnesses, medical conditions, exposure to toxic agents, and similar matters, may be disclosed to members of Department advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities, and to designated employees of Federal, State, or local government, or government-sponsored entities, authorized to provide advice to the Department concerning health, safety, or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services. Records that may reflect adversely upon individuals, such as records concerning disciplinary actions, reprimands, admonitions, adverse actions, performance appraisals, security infraction notices, supervisor-employee discussions, and similar matters, will not be made available for the proposed new routine uses.

The proposed health studies amendments should not have adverse privacy consequences. Health studies tend to benefit persons in the studied populations by identifying possible increases in adverse health effects following exposure to toxic agents. Individuals are never identified in published studies and the studies are not used to support determinations concerning any individual's rights, benefits or privileges.

Furthermore, in addition to the withholding of records that may adversely reflect upon individual employees, privacy interests will be protected by a number of means. As a condition of releasing individually identifiable information for studies, surveys, or surveillances conducted for DOE, persons conducting studies will be required to: (1) Keep personal information confidential; (2) use personal information only for purposes of studies in which there is no publication of the identity of any individual subject; (3) consult with DOE prior to any release of personally identifiable information obtained from DOE; (4) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record; (5) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project under these same conditions and with written authorization from the Department, (c) for disclosure to an authorized person for the purpose of an audit related to the research project, and (d) when required by law. Additionally, the Department will secure a written statement attesting to the recipient's understanding of, and willingness to abide by, these provisions. The provisions in this paragraph apply to DOE collaborating researchers, not those studies being performed by the Department of Health and Human Services.

Privacy safeguards are in place regarding the studies to be conducted pursuant to the Memoranda of Understanding with Department of Health and Human Services or its components. Department of Health and Human Services has agreed: (1) Not to use or disclose any personally-identifiable information obtained from DOE or its contractors and grantees except for research purposes and other public health activities required by law; (2) not to use information in identifiable form to make any determination about the rights, benefits, or privileges of any individual; (3) to use and disclose information in accord with agreements under which the personally-identifiable information was obtained by the Department or its contractors and provided such use or disclosure is consistent with applicable law; (4) to notify the Department of any efforts to use or obtain personally-identifiable information for purposes other than research or other public health activities required by law; (5) to take appropriate steps to prevent improper disclosure; (6) to establish or modify Privacy Act systems of records broadening the ''Categories of Individuals'' section to specifically address information provided by DOE, as necessary, and consult with the Department concerning provisions of Privacy Act systems of records notices. Additionally, Department of Health and Human Services requires its contractors, grantees and cooperative agreement holders performing epidemiological studies or other public health activities required by law to abide by conditions similar to those imposed by the Department, as described in this paragraph.

The Department is also adding its (1) authority for maintaining this record system, and (2) Savannah River Operations Office as one of the locations of records contained in DOE–15.

The Department is submitting the report required by Office of Management and Budget Circular A–130 concurrently with the publication of this notice. The text of this notice contains the information required by the Privacy Act, 5 U.S.C 552a(e)(4)(d).

Issued in Washington, DC this 11th day of December, 1995.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

DOE–15

SYSTEM NAME:

Payroll and Pay-Related Data for Employees of Terminated Contractors.

SYSTEM LOCATION:

U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

U.S. Department of Energy, Albuquerque Operations Office, PO

Box 5400, Albuquerque, N.M. 87185–5400
U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402
U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831–8501
U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352
U.S. Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC 29802
U.S. Department of Energy, Western Area Power Administration, PO Box 4302, Golden, CO 80401

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former contractor employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee payroll data from terminated contractors, employment history, job titles, complaints, salary reviews, and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act.

PREVIOUS ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used to verify past earnings, job titles, periods of employment, and pay status for Government agencies, litigation and medical decisions, plus the following:

1. In the event that a record within this system of records maintained by this agency indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. A record from this system of record may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates, or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

5. A record maintained by this agency to carry out its functions which relates to civil and criminal proceedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations 28 CFR 50.2.

6. A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations.

7. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

8. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

9. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

10. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

PROPOSED AMENDED ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

11. Discrete portions of payroll and pay related data reflecting employment history, date of birth, job titles, job descriptions, attendance, accidents, illnesses, medical conditions, exposure to toxic agents and similar matters, may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components. Records that may reflect adversely upon individuals, such as records concerning disciplinary actions, reprimands, admonitions, adverse actions, performance appraisals, security infraction notices, supervisor-employee discussions, and similar matters, will not be made available for the proposed new routine uses.

12. Subject to the same Privacy Act limitations applicable to employees of the Department, discrete portions of payroll and pay related data reflecting employment history, date of birth, job titles, job descriptions, attendance, accidents, illnesses, medical conditions, exposure to toxic agents and similar matters, may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in

performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record: To Federal, State, and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes. Records that may reflect adversely upon individuals, such as records concerning disciplinary actions, reprimands, admonitions, adverse actions, performance appraisals, security infraction notices, supervisor-employee discussions, and similar matters, will not be made available for the proposed new routine uses.

13. Discrete portions of payroll and pay related data reflecting employment history, date of birth, job titles, job descriptions, attendance, accidents, illnesses, medical conditions, exposure to toxic agents, and similar matters, may be disclosed to members of Department advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities, and to designated employees of Federal, State, or local government, or government-sponsored entities, authorized to provide advice to the Department concerning health, safety, or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services. Records that may reflect adversely upon individuals, such as records concerning disciplinary actions, reprimands, admonitions, adverse actions, performance appraisals, security infraction notices, supervisor-employee discussions, and similar matters, will not be made available for the proposed new routine uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in DOE records holding area.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Office of Contractor Human Resource Management, (HR–54) 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The directors of contractors industrial relations at the location where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA/Privacy Act Division, Department of Energy, Washington, DC 20585, or the Privacy Act Officer at the appropriate address identified under the heading ''System location'', above, in accordance with the Department's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

DOE contractors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 95–30587 Filed 12–14–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EC96–5–000]

Old Dominion Electric Cooperative; Notice of Application

December 11, 1995.

Take notice that on December 11, 1995, Old Dominion Electric Cooperative (''Old Dominion'' or ''Applicant'') filed an application seeking an order under Section 203 of the Federal Power Act authorizing Old Dominion to enter a lease and leaseback transaction that includes its 50% undivided interest in certain jurisdictional transmission facilities related to Unit 1 at the Clover Power Station located in Halifax County, Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 22, 1995. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30526 Filed 12–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–95–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

December 11, 1995.

Take notice that on December 4, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP96–95–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate as a jurisdictional facility, a delivery tap placed in service under Section 311(a) of the Natural Gas Policy Act and § 284.3(c) of the Commission's Regulations, under Koch Gateway's blanket certificate issued in Docket No.

CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway states that the proposed certification of facilities will enable it to provide transportation under its blanket transportation certificate through an existing delivery tap serving Entex, Inc. a local distribution company, in Polk County, Texas.

Koch Gateway asserts that it will operate the delivery tap in compliance with 18 CFR Part 157, Subpart F and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30525 Filed 12–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–96–000]

Michigan Gas Storage Company; Notice of Request Under Blanket Authorization

December 11, 1995.

Take notice that on December 4, 1995, Michigan Gas Storage Company (MGSCo), 212 West Michigan Avenue, Jackson, Michigan 49201, filed a prior notice request with the Commission in Docket No. CP96–96–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon by sale to Consumers Power Company (Consumers) approximately 18 miles of 8-inch diameter pipe, under MGSCo's blanket certificate issued in Docket No. CP84–451–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

MGSCo proposes to abandon by sale approximately 18 miles of 8-inch diameter pipe (Line 200) in Isabella and Midland Counties, Michigan. MGSCo would sell all of the properties, rights-of-way, and facilities associated with the above described pipeline to Consumers at the net book value of $1,500. MGSCo also states that it would continue to serve Consumers in the area via the Mt. Pleasant Station and the Midland City Gate, which would relieve MGSCo of the obligation to operate and maintain the pipeline facilities without a reduction in service to Consumers. MGSCo further states that Consumers would also have the flexibility to use the pipeline facilities as a high pressure line or as a low pressure distribution line for serving customers in the developing bi-county area.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30524 Filed 12–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–99–000]

Natural Gas Pipeline Company of America; Notice of Application

December 11, 1995.

Take notice that on December 6, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP96–99–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) Regulations thereunder, requesting authority to abandon by sale to High Plains Gathering System, LLC (''High Plains''), a non-affiliate, certain certificated facilities that, along with certain other non-certificated facilities, comprise the High Plains system of Natural, currently owned and operated by it in Eastern Colorado (the ''System'').

Natural states that, if the abandonment authorization sought herein is granted, Natural will be requesting, in a subsequent NGA Section 4 filing, to terminate the services which it has performed by means of the System. All of the System will be sold to High Plains for $750,000 dollars. Natural is requesting the prompt issuance of an order granting the abandonment sought herein so that Natural may be relieved of certain gas purchase obligations that are being assigned to High Plains in connection with the sale of these facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30523 Filed 12–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL96–21–000]

Cleveland Public Power of the City of Cleveland, Ohio v. The Cleveland Electric Illuminating Company; Notice of Filing

December 8, 1995.

Take notice that on November 29, 1995, Cleveland Public Power of the City of Cleveland, Ohio (CPP) tendered for filing a complaint against The Cleveland Electric Illuminating Company (CEI) seeking an order requiring CEI to provide transmission service to CPP for a 40 Mw purchase of power by CPP from Ohio Power Company as independently required by: (1) CEI's Tariff No. 1 on filed with the Commission, and (2) Antitrust License Conditions imposed upon CEI by the United States Nuclear Regulatory Commission. CPP also requests that this Complaint be consolidated with any proceedings in Docket No. EL96–9–000 on the Petition of CEI for Declaratory Order that Company Is Not Required to Provide Requested Transmission Service, filed by CEI on November 2, 1995, that the relief requested in this Complaint be summarily granted, and that expedited procedures be adopted for the resolution of both proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 8, 1996. 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. Answers to the complaint shall be filed on or before January 8, 1996.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–30522 Filed 12–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–29–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

December 11, 1995.

Take notice that on December 7, 1995, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Original Sheet No. 237.13, to be effective December 1, 1995.

National states that the tariff sheet is being submitted in compliance with the letter order issued November 30, 1995, by the Commission in Docket No. RP96–29–000. This order directed National to revise its tariff filing to eliminate the reference to a minimum term of service contained in its bid evaluation criteria.

National states that it is serving copies of the filing to its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's regulations, all such protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

FR Doc. 95–30521 Filed 12–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL87–51–007, et al.]

Gulf States Utilities Company, et al.; Electric Rate and Corporate Regulation Filings

December 11, 1995.

Take notice that the following filings have been made with the Commission:

1. Gulf States Utilities Company

[Docket Nos. EL87–51–007 and ER88–477–007]

Take notice that on November 30, 1995, Gulf States Utilities Company tendered for filing revised copies of its compliance filing in the above referenced dockets.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Mock Resources, Inc.

[Docket No. ER95–300–004]

On October 30, 1995, as amended on November 15, 1995, Mock Resources, Inc. filed a notice of succession changing its name from Wickland Power Services to Mock Resources, Inc.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Colorado]

[Docket No. ER95–1268–002]

Take notice that on November 13, 1995, Public Service Company of Colorado tendered for filing revised sheets to the point-to-point transmission service tariffs.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Montaup Electric Company

[Docket No. ER96–104–000]

Take notice that on November 27, 1995, Montaup Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Alabama Power Company

[Docket No. ER96–196–000]

Take notice that on December 6, 1995, Alabama Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Alabama Power Company

[Docket No. ER96–307–000]

Take notice that on December 6, 1995, Alabama Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Canal Electric Company

[Docket No. ER96–478–000]

Take notice that on November 30, 1995, Canal Electric Company (Canal) filed under § 205 of the Federal Power Act two supplements (a Capacity Acquisition Commitment and an Amendment to Participation Agreements) to existing Canal Rate Schedules FERC Nos. 21, 25 and 35, which specify the terms under which Canal may act as the wholesale purchaser for its retail affiliates Commonwealth Electric Company and Cambridge Electric Light Company and will purchase on their behalf capacity and/or energy from Hydro Quebec on an opportunity type basis.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service Corporation

[Docket No. ER96–479–000]

Take notice that on November 30, 1995, Central Vermont Public Service Corporation (CVPS), tendered for filing the Forecast 1996 Cost Report required under Paragraph Q–2 on Original Sheet No. 19 of the Rate Schedule FERC No. 135 (RS–2 rate schedule) under which CVPS sells electric power to Connecticut Valley Electric Company Inc. (Customer). CVPS states that the Cost Report reflects changes to the RS–2 rate schedule which were approved by the Commission's June 6, 1989 order in Docket No. ER88–456–000.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Alabama Power Company, et al.

[Docket No. ER96–480–000]

Take notice that on November 30, 1995, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies), tendered for filing an agreement for the sale of capacity to East Kentucky Power Cooperative, Inc. The agreement establishes the terms and conditions of power supply, including provisions relating to service conditions, scheduling procedures, appointment of operating representatives, and other matters related to the administration of the agreement.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Pennsylvania Power & Light Company

[Docket No. ER96–481–000]

Take notice that on November 30, 1995, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission the Service Agreement (the Agreement) between PP&L and Tenneco Energy Marketing Company, dated November 20, 1995.

The Agreement supplements a Short Term Capacity and Energy Sales umbrella tariff approved by the Commission in Docket No. ER95–782–000 on June 21, 1995.

In accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act,* 64 FERC ¶ 61,139, *clarified and reh'g granted in part and denied in part,* 65 FERC ¶ 61,081 (1993), PP&L requests the Commission to make the Agreement effective as of the date of execution, because service will be provided under an umbrella tariff and the service agreement is filed within 30 days after the commencement of service. In accordance with 18 CFR 35.11, PP&L has requested waiver of the sixty-day notice period in 18 CFR 35.2(e). PP&L has also requested waiver of certain filing requirements, for information previously filed with the Commission in Docket No. ER95–782–000.

PP&L states that a copy of its filing was provided to Tenneco Energy Marketing Company and to the Pennsylvania Public Utility Commission.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Company

[Docket No. ER96–482–000]

Take notice that on November 30, 1995, Portland General Electric Company (PGE), tendered for filing its Average System Cost (ASC) as calculated by PGE and determined by the Bonneville Power Administration under the revised ASC Methodology which became effective on October 1, 1984. This filing includes PGE's revised Appendix 1 of the Residential Purchase and Sale Agreement.

PGE states that the revised Appendix 1 shows the ASC to be 34.15 mills/kWh effective April 1, 1995. The Bonneville Power Administration determined the ASC rate for PGE to be 34.15 mills/kWh.

Copies of the filing have been served on the persons named in the transmittal letter as included in the filing.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER96–483–000]

Take notice that on November 30, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (Entergy Operating Companies), tendered for filing a Transmission Service Agreement (TSA) between Energy Services, Inc. and Citizens Lehman Power Sales. Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies provide non-firm transmission service under their Transmission Service Tariff.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, (the APS Companies)

[Docket No. ER96–484–000]

Take notice that on November 30, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies), filed a Standard Transmission Service Agreement to add National Fuel Resources, Inc., Northeast Utilities Service Company, and Virginia Electric and Power Company as Customers to the APS Companies' Standard Transmission Service Rate Schedule which has been accepted for filing by the Federal Energy Regulatory Commission. The proposed effective date under the proposed rate schedule is November 30, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. East Texas Electric Cooperative, Inc.

[Docket No. ER96–485–000]

Take notice that on November 30, 1995, East Texas Electric Cooperative, Inc. (ETEC), tendered for filing a proposed rate schedule change other than a rate increase. The proposed rate schedule change affects ETEC's competitive rate, Rate Schedule C–1. The proposed rate schedule change affects Rate Schedule C–1 which is available to ETEC's three member generation and transmission cooperative (G&T's) (Sam Rayburn G&T Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.) for resale to the G&T's member distribution cooperatives that, in turn, are intending to attract or maintain large load retail customers. In order for a large load retail customers to qualify under ETEC's present Rate Schedule C–1, it must, inter alia: (1) Add a monthly load of not less than 2,500 kW, and (2) provide certain data to ETEC demonstrating its qualifications to take service under Rate Schedule C–1. The only affect of the proposed rate schedule change is to liberalize these qualifying requirements for potential retail customers.

Copies of the filing were served upon the public utility's customers, and the Public Utility Commission of Texas.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Connecticut Valley Electric Company, Inc.

[Docket No. ER96–486–000]

Take notice that on November 30, 1995, Connecticut Valley Electric Company, Inc. (Connecticut Valley) tendered for filing the determination of the 1995 payment to Connecticut Valley as provided by the Transmission Service Agreement with Woodsville Water & Light Department (Woodsville) dated December 15, 1975. Such agreement was originally filed in Docket No. ER94–637–000 and designated at Rate Schedule FERC No. 12.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER96–487–000]

Take notice that on November 30, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (Entergy Operating Companies), tendered for filing a Transmission Service Agreement (TSA) between Entergy Services, Inc. and Sonat Power Marketing Inc. Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies provide non-firm transmission service under their Transmission Service Tariff.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power & Light Company

[Docket No. ER96–495–000]

Take notice that on December 1, 1995, Florida Power & Light Company tendered for filing depreciation rates for use in its transmission tariffs, wholesale electric service tariffs, and 49 transmission and power sales contracts.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30579 Filed 12–14–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EC96–4–000, et al.]

PSI Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

December 8, 1995.

Take notice that the following filings have been made with the Commission:

1. PSI Energy, Inc.

[Docket No. EC96–4–000]

Take notice that PSI Energy, Inc., formerly named Public Service Company of Indiana, Inc., on December 5, 1995, filed an Application with the Federal Energy Regulatory Commission (Commission) pursuant to Section 203 of the Federal Power Act for authorization to exchange certain transmission facilities with Hoosier Energy Rural Electric Cooperative, which, except for their ownership, would be subject to this Commission's jurisdiction.

Comment date: December 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Empresa de Generación Eléctrica de Lima S.A.

[Docket No. EG96–21–000]

On November 30, 1995, Empresa de Generación Eléctrica de Lima S.A., c/o Entergy Power Group, Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by section 711 of the Energy Policy Act of 1992. The applicant is a corporation that is engaged directly and exclusively in owning and operating electric generating units in Peru. The facilities consist of five hydroelectric facilities located at various remote sites, one oil-fired facility located on the outskirts of Lima, and 576 kilometers of associated transmission lines.

Comment date: December 26, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Vesta Energy Alternatives Company and ICPM, Inc.

[Docket No. ER94–1168–006, ER95–640–002, Not Consolidated]

Take notice that the following information filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 30, 1995, Vesta Energy Alternatives Company filed certain information as required by the Commission's July 8, 1994, order in Docket No. ER94–1168–000.

On November 30, 1995, ICPM, Inc. filed certain information as required by the Commission's March 31, 1995, order in Docket No. ER95–640–000.

4. The Washington Water Power Company

[Docket No. ER95–966–000]

Take notice that on November 29, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an amendment to the above referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Kentucky Utilities Company

[Docket No. ER95–1601–001]

Take notice that on November 13, 1995, Kentucky Utilities Company (KU) tendered for filing the rates and terms for transactions made pursuant to KU's Power Services Tariff and Service Agreement executed pursuant thereto with Electric Clearinghouse, Inc. filed with the Commission in Docket No. ER95–1601–001.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. New York State Electric & Gas Company

[Docket No. ER95–1678–000]

Take notice that on November 13, 1995, New York State Electric & Gas Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Texaco Natural Gas Inc.

[Docket No. ER95–1787–000]

Take notice that on November 29, 1995, Texaco Natural Gas Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER95–1847–000]

Take notice that on November 22, 1995, Niagara Mohawk Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Light Company

[Docket No. ER96–112–000]

Take notice that on November 17, 1995, Central Illinois Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Greenwich Energy Partners, L.P.

[Docket No. ER96–116–000]

Take notice that on November 16, 1995, Greenwich Energy Partners, L.P. tendered for filing an amendment in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. New York State Electric & Gas Corporation

[Docket Nos. ER96–136–000, ER96–137–000 and ER96–154–000]

Take notice that on November 13, 1995, New York State Electric & Gas Corporation (NYSEG) tendered for filing an amendment to the filings made on October 23 and October 26, 1995 in the above-referenced dockets. These dockets concern NYSEG power sales agreements with:

ER96–136–000: North American Energy Conservation, Inc.
ER96–137–000: National Fuel Resources, Inc.
ER96–154–000: Aquila Power Corp.

This filing corrects a typographical error in the rate ceiling applicable to buy-sell transactions to allow NYSEG to charge mutually agreeable rates up to a ceiling rate that includes a transmission component based on NYSEG's embedded cost of transmission. This filing will not change the requirement that NYSEG and the Purchaser reach mutual agreement as to the rates and terms of each Transaction in advance of each Transaction.

NYSEG requests that the agreement, and this filing become effective on the following dates:

Docket Nos. ER96–136 and ER96–137: October 24, 1995
Docket No. ER96–154: October 27, 1995

NYSEG has requested waiver of the notice requirements for good cause shown.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Enerserve, L.C.

[Docket No. ER96–182–000]

Take notice that on November 27, 1995, Enerserve, L.C. tendered for filing an amendment in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Vermont Electric Power Company, Inc.

[Docket No. ER96–194–000]

Take notice that on November 13, 1995, Vermont Electric Power Company, Inc. tendered for filing supplemental information to its October 31, 1995 filing in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. PowerMark, L.L.C.

[Docket No. ER96–332–000]

Take notice that on December 6, 1995, PowerMark, L.L.C. tendered for filing an amendment in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Portland General Electric Company

[Docket No. ER96–333–000]

Take notice that on December 1, 1995, Portland General Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Westar Electric Marketing, Inc.

[Docket No. ER96–458–000]

Take notice that on November 29, 1995, Westar Electric Marketing, Inc. (Westar Electric), tendered for filing pursuant to 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1. Westar Electric requests an order accepting its rate schedule, effective as of the date of filing or at the earliest possible date, but not later than January 28, 1996.

Westar Electric intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Westar Electric sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Westar Electric is not currently in the business of generating, transmitting, or distributing electric power.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Western Resources, Inc.

[Docket No. ER96–459–000]

Take notice that on November 29, 1995, Western Resources, Inc. (Western Resources), tendered for filing a proposed flexible point-to-point transmission tariff and a proposed network integration transmission tariff. Western Resources proposes that these tariffs become effective upon filing or at the earliest possible date, but not later than January 28, 1996.

Copies of this filing were served upon all parties to Docket No. ER95–1515–000.

Comment date: December 22 1995, in accordance with Standard Paragraph E at the end of this notice.

18. The Washington Water Power Company

[Docket No. ER96–460–000]

Take notice that on November 29, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 4 with Southern Energy Marketing, Inc. Also submitted with this filing is a Certificate of Concurrence with respect to exchanges. WWP requests waiver of the prior notice requirement and requests an effective date of December 1, 1995.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Electric and Gas Company

[Docket No. ER96–461–000]

Take notice that on November 29, 1995, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of energy and capacity to Tennessee Power Company (TPCO).

PSE&G requests the Commission to waive its notice requirements under

§ 35.3 of its Rules and to permit the Energy Sales Agreement to become effective as of November 30, 1995. Copies of the filing have been served upon TPCO.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Southwestern Public Service Company

[Docket No. ER96–462–000]

Take notice that on November 29, 1995, Southwestern Public Service Company (Southwestern), tendered for filing a proposed amendment to its rate schedule with Roosevelt County Electric Cooperative, Inc. (Roosevelt).

The proposed amendment adds an additional delivery point for service to Roosevelt.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Public Service Electric and Gas Company

[Docket No. ER96–463–000]

Take notice that on November 29, 1995, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of energy and capacity to Rainbow Energy Marketing Corporation (REMC).

PSE&G requests the Commission to waive its notice requirements under Section 35.3 of its Rules and permit the Energy Sales Agreement to become effective as of November 30, 1995. Copies of the filing have been served upon REMC.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Florida Power Corporation

[Docket No. ER96–464–000]

Take notice that on November 2, 1995, Florida Power Corporation filed three revised tariff sheets containing corrections to errors in the corresponding tariff sheets previously accepted by the Commission as part of the settlement in these dockets approved by the Commission on September 14, 1995.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. PECO Energy Company

[Docket No. ER96–465–000]

Take notice that on November 29, 1995, PECO Energy Company (PECO), filed a Service Agreement dated November 20, 1995, with Missouri Public Service, a division of Utilicorp United, Inc. (MPS) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds MPS as a customer under the Tariff.

PECO states that copies of this filing have been supplied to MPS and to the Pennsylvania Public Utility Commission.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. PECO Energy Company

[Docket No. ER96–466–000]

Take notice that on November 29, 1995, PECO Energy Company (PECO), filed a Service Agreement dated November 20, 1995, with Westplains Energy—Kansas, a division of Utilicorp United, Inc. (WPEK) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds WPEK as a customer under the Tariff.

PECO requests an effective date of November 20, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to WPEK and to the Pennsylvania Public Utility Commission.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. PECO Energy Company

[Docket No. ER96–467–000]

Take notice that on November 29, 1995, PECO Energy Company (PECO), filed a Service Agreement dated November 20, 1995, with Westplains Energy—Colorado, a division of Utilicorp United, Inc. (WPEC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds WPEC as a customer under the Tariff.

PECO requests an effective date of November 20, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to WPEC and to the Pennsylvania Public Utility Commission.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Companyy (the APS Companies)

[Docket No. ER96–468–000]

Take notice that on November 29, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies), filed a Standard Transmission Service Agreement to add Coastal Electric Services Company, Industrial Energy Application, Inc., and Koch Power Services, Inc. as Customers to the APS Companies' Standard Transmission Service Rate Schedule which has been accepted for filing by the Federal Energy Regulatory Commission. The proposed effective date under the proposed rate schedule is November 30, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies)

[Docket No. ER96–470–000]

Take notice that on November 29, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies) filed a Supplement No. 6 to add seven (7) Customers to the Standard Generation Service Rate Schedule under which the APS Companies offer standard generation and energy service to these Customers on an hourly, daily, weekly, monthly or yearly basis. The following new Customers are added by this filing: Coastal Electric Services Company, Industrial Energy Applications, Inc., KCS Power Marketing, Inc., Koch Power Services, Inc., LG&E Power Marketing, Inc., National Fuel Resources, Inc., and Rainbow Energy Marketing Corporation. The APS Companies request a waiver of notice requirements to make service available as of November 30, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. The Montana Power Company

[Docket No. ER96–471–000]

Take notice that on November 30, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, as an initial rate schedule, a Unit Contingent Capacity and Associated Energy Sales Agreement Between Montana and Morgan Stanley Capital Group (Morgan Stanley).

A copy of the filing was served upon Morgan Stanley.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

29. The Montana Power Company

[Docket No. ER96–472–000]

Take notice that on November 30, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, as an initial rate schedule, a Unit Contingent Capacity and Associated Energy Sales Agreement Between Montana and Sonat Power Marketing Inc. (Sonat).

A copy of the filing was served upon Sonat.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

30. New England Power Company

[Docket No. ER96–473–000]

Take notice that on November 30, 1995, New England Power Company (NEP), submitted for filing an amendment to a service agreement, dated August 25, 1967, between NEP and Green Mountain Power Corporation entered into under NEP's FERC Electric Tariff, Original Volume No. 1.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

31. New England Power Company

[Docket No. ER96–474–000]

Take notice that on November 30, 1995, New England Power Company (NEP) filed an Interconnection System Study Agreement between Green Mountain Power Corporation and NEP, under which NEP has agreed to conduct an interconnection study related to the interconnection of a 6 MW facility in Searsburg, Vermont with NEP's transmission system. NEP requests an effective date of sixty (60) days following the date of filing.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

32. Northern States Power Company (Minnesota Company)

[Docket No. ER96–475–000]

Take notice that on November 30, 1995, Northern States Power Company (Minnesota) (NSP), tendered for filing Supplement No. 5 to the Transmission Services Agreement between NSP and the State of South Dakota (State), serving the South Dakota State Penitentiary. The Commission has assigned Rate Schedule No. 385 to previously filed agreements between NSP and the State.

Supplement No. 5 to the Transmission Services Agreement provides for an increase in the power allocation from the Western Area Power Administration (WAPA). NSP requests the Commission to waive its Part 35 notice requirements and accept the Supplement for filing effective December 1, 1995.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

33. Morgan Stanley Capital Group, Inc.

[Docket No. ER96–476–000]

Take notice that on November 30, 1995, Morgan Stanley Capital Group Inc. (Morgan Stanley) tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that Morgan Stanley had completed all the steps for pool membership. Morgan Stanley requests that the Commission amend the WSPP Agreement to include it as a member.

Morgan Stanley requests an effective date of December 1, 1995, for the proposed amendment. Accordingly, Morgan Stanley requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon counsel for the WSPP and the WSPP Executive Committee.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

34. Public Service Company of Oklahoma

[Docket No. ER96–477–000]

Take notice that on November 30, 1995, Public Service Company of Oklahoma (PSO) hereby submits the Emergency Transmission Maintenance Agreement (Agreement) between PSO and the Oklahoma Municipal Power Authority (OMPA). Pursuant to the Agreement, PSO will provide emergency repairs or replacements of, and in certain circumstances operate, electrical equipment in substations in electric transmission lines owned by OMPA which are located in PSO's control area. PSO will provide the services reflected in the Agreement upon specific request from OMPA.

PSO requests an effective date of December 1, 1995 for the Agreement. Accordingly, PSO requests waiver of the Commission's notice requirements. Copies of this filing have been served upon OMPA and the Oklahoma Corporation Commission.

Comment date: December 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–30580 Filed 12–14–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5231–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 260–7153. Weekly receipt of Environmental Impact Statements Filed December 04, 1995 Through December 08, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950565, Draft EIS, FRC, WA, Cushman Hydroelectric Project (FERC No. 460), Relicensing, North Fork Skokomish River, Mason County, WA, Due: January 29, 1996, Contact: John Blair (202) 219–2845.

EIS No. 950566, Draft EIS, FHW, CA, Arden Garden Connector Project, Arden Way in North Sacramento to Garden Highway in South Natomas across the Natomas East Main Drainage Canal, Funding, Sacramento County, CA, Due: January 31, 1996,

Contact: Dennis Scovill (916) 498–5034.

EIS No. 950567, Draft EIS, AFS, AR, Renewal of the Shortleaf Pine/Bluestem Grass Ecosystem and Recovery of the Red-cockaded Woodpecker, Amendment No. 22 to the Ouachita National Forest Land and Resource Management Plan, Scott and Polk Counties, AR, Due: March 01, 1996, Contact: John Cleeves (501) 321–5251.

EIS No. 950568, Draft EIS, FAA, NY, LaGuardia Airport East End Roadway Improvements Project, Four New Ramps at the 102nd Street Bridge Construction, Airport Layout Plan Approval and Funding, Queens County, NY, Due: February 14, 1996, Contact: Philip Brito (516) 227–3800.

EIS No. 950569, Final EIS, USN, HI, Bellows Air Force Station Land Use and Development Plan, Implementation, Waimanalo, Honolulu County, HI, Due: January 16, 1996, Contact: Gary Kasaoka (808) 474–4890.

EIS No. 950570, Draft EIS, AFS, CA, Placerville Nursery Pest Management Plan, Implementation, Camino, El Dorado County, CA, Due: January 29, 1996, Contact: Susan Frankel (415) 705-2651.

EIS No. 950571, Draft Supplement, COE, AK, Chignik Small Boat Harbor Development and Construction, Updated Information concerning Alternatives, Anchorage Bay, Alaska Peninsula, AK, Due: February 02, 1996, Contact: Guy R. McConnell (907) 753–2640.

EIS No. 950572, Final EIS, BLM, CA, NV, Alturas 345 Kilovolt (KV) Electric Power Transmission Line Project, Construction, Operation and Maintenance, Right-of-Way Grant Approval, Special-Use-Permit and COE Section 404 Permit, Susanville District, Modoc, Lassen and Sierra Counties, CA and Washoe County, NV, Due: January 16, 1996, Contact: Peter Humm (916) 257–0456.

EIS No. 950573, Draft EIS, BLM, NV, Lone Tree Gold Mine Expansion Project, Plan of Operations Approval and Permit Issuance, Winnemucca District, Humboldt County, NV, Due: February 16, 1996, Contact: Gerald Moritz (702) 623–1500.

EIS No. 950574, Draft Supplement, FHW, UT, West Valley Highway/Norman H. Bangerter Highway Transportation Improvements, 9000 South to 12600 South, Additional Information concerning 9800 South at Bangerter Highway, Funding, Salt Lake County, UT, Due: January 30, 1996, Contact: Tom Allen (801) 963–0182.

EIS No. 950575, Final EIS, FHW, NC, US 1 Improvements, Secondary Road 1853 at Lakeview to Secondary Road 1180 south of Sanford, Funding and COE Section 404 Permit Issuance, Lee and Moore Counties, NC, Due: January 29, 1996, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 950576, Draft EIS, SFW, CA, Programmatic EIS—Natural Community Conservation Plan/Habitat Conservation Plan, Implementation and Associated Incidental Take Permit Issuance, Central and Coastal Subregion, Orange County, CA, Due: January 29, 1996, Contact: Linda R. Dawes (714) 834–2252.

Amended Notices

EIS No. 950493, Draft EIS, USN, CA, Camp Pendleton Marine Corps Air Stations (MCAS) Tustin and EL Toro Marine Corps Base (MCB) Realignment, Implementation and COE Section 404 Permit, San County Diego, CA, Due: January 18, 1996, Contact: Harry Roberts (714) 726–3383. Published FR 11–03–95—Review period extended.

EIS No. 950500, Draft EIS, FHW, FL, Miami Intermodal Center (MIC) Construction, Bounded by FL–112 on the north, FL–836 on the south, Miami International Airport landside terminal NW 27th Avenue on the east, along FL–836 that extends West to NW 57th Avenue, Dade County, Due: December 18, 1995, Contact: J.R. Skinner (904) 942–9579. Published FR 11–03–95—Correction to EIS Title.

Dated: December 12, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–30604 Filed 12–14–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5346–5]

Montana Board of Oil and Gas Conservation; Underground Injection Control; Primacy Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period and of public hearing.

SUMMARY: The purpose of this notice is to announce that the Environmental Protection Agency (EPA) has received an application from the Montana Board of Oil and Gas Conservation requesting primary responsibility for administration and enforcement of the Underground Injection Control (UIC) Program for Class II injection wells, that EPA has determined the application contains all the required elements, and that EPA is rescheduling the public hearing originally scheduled for November 14, 1995. Montana's application for primacy is available for inspection and copying at the addresses appearing below, and public comments are requested. The November 14 hearing was canceled due to budgetary circumstances that resulted in a temporary shutdown of EPA.

Section 1422 (b) (4) of the Safe Drinking Water Act (SDWA) requires that prior to approving, disapproving, or approving in part, a State's UIC program, the Administrator provide opportunity for a public hearing. This notification advises the public of the date, time and location of this required public hearing.

The public comment period and public hearing is intended to help provide EPA the breadth of information and public opinion necessary to approve, disapprove, or approve in part the application from the Montana Board of Oil and Gas Conservation to regulate Class II injection wells under provisions of Section 1425 of the SDWA.

DATES: Requests to present oral testimony must be received by Wednesday, January 10, 1996; the public hearing will be held on Thursday, January 18, 1996, at 7:00 p.m. (MST). The hearing will be held in the Galletin meeting room in the Holiday Inn, 5500 Midland Road, Billings, Montana. All written comments must be received by Friday, January 26, 1996.

ADDRESSES: Written comments and requests to testify should be mailed to Dan Jackson, Ground Water Unit (8P2–W-GW), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466. Copies of the application and related materials are available between 8:30 a.m. and 4:00 p.m. Monday through Friday at the following locations:

Environmental Protection Agency, Region VIII, Ground Water Unit, 4th Floor Terrace, 999 18th Street, Denver, CO 80202–2466, PHN: (303) 312–6125

Montana Board of Oil and Gas Conservation, 2535 St. Johns Avenue, Billings, MT 59102, PHN: (406) 656–0040

Environmental Protection Agency, Region VIII, Montana Operations Office, Federal Office Building, 301 South Park, Helena MT 59626–0026, PHN: (406) 449–5486

FOR FURTHER INFORMATION CONTACT: Paul S. Osborne, Ground Water Unit (8P2–W-GW), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500,

Denver, CO 80202–2466, (303) 312–6125.

SUPPLEMENTARY INFORMATION: The UIC program was implemented under the federal, Safe Drinking Water Act to prevent contamination of all underground sources of drinking water (USDW), which are aquifers capable of yielding a significant amount of water containing less than 10,000 mg/liter of total dissolved solids. If the application by the Montana Board of Oil and Gas Conservation is approved, the State would be responsible for preventing endangerment of USDWs by the following activities: (1) Disposal (via injection wells) of fluids produced in conjunction with primary oil and gas development and production, including gas plant waste; (2) injection for the purpose of storing liquid hydrocarbons; and (3) injection of fluids for the purpose of enhanced recovery of oil and gas. The program proposed by the State will regulate Class II injection activities by establishing state permits which will include technical requirements for the protection of USDWs. Such requirements include criteria for construction, testing, operation, monitoring and abandonment of injection wells.

At present, there are approximately 1,232 Class II injection wells in Montana. The USEPA has held primary administrative and enforcement authority for the UIC program in Montana since the program was implemented in 1984. The application from the Montana Board of Oil and Gas Conservation requests that EPA delegate to the State primary authority for the regulation of all Class II injection wells on all lands subject to the State's police power and taxing authority and all lands owned or under the jurisdiction of the United States, except those wells located within the exterior boundaries of an Indian Reservation pursuant to 40 CFR Section 144.3. The application includes program description, copies of all applicable rules and forms, a quality assurance plan, a statement of legal authority and appropriate memoranda of agreement.

Dated: December 7, 1995.

Stephen Tuber,

Acting Assistant Regional Administrator, Office of Pollution Prevention, State and Tribal Assistance Region VIII, US Environmental Protection Agency.

[FR Doc. 95–30556 Filed 12–14–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Safety Wireless Advisory Committee; Subcommittee Meetings

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the next meetings of the five Subcommittees of the Public Safety Wireless Advisory Committee. The NTIA and the FCC established a Public Safety Wireless Advisory Committee and Subcommittees to prepare a final report to advise the NTIA and the FCC on operation, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. All interested parties are invited to attend and to participate in the next round of meetings of the Subcommittees.

DATES: January 8, 9, 10, 1996 (Monday through Wednesday).

ADDRESSES: University of California at Berkeley, Lawrence Hall of Science (LHS), Auditorium, 2951 Centennial Drive (¼ mile west of Grizzly Park Blvd.), Berkeley, California 94720.

FOR FURTHER INFORMATION CONTACT: For information regarding the Subcommittees, contact: Interoperability Subcommittee: James E. Downes at 202–622–1582, Operational Requirements Subcommittee: Paul H. Wieck at 515–281–5261, Spectrum Requirements Subcommittee: Richard N. Allen at 703–630–6617, Technology Subcommittee: Alfred Mello at 401–738–2220, Transition Subcommittee: Ronnie Rand at 904–322–2500 or 800–949–2726 ext. 600.

For more information regarding accommodations and transportation, contact: Deborah Behlin at 202–418–0650 (phone), 202–418–2643 (fax), or dbehlin@fcc.gov (email). You may also contact Ms. Behlin for general information concerning the Public Safety Wireless Advisory Committee. Information is also available from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov).

SUPPLEMENTARY INFORMATION: The five Subcommittees of the Public Safety Wireless Advisory Committee will hold consecutive meetings over a three day period, Monday through Wednesday, January 8, 9, 10, 1996. The expected arrangement of the meetings, which is subject to change at the time of the meetings, is as follows:

January 8, 1995: The *Technology* and *Transition* Subcommittee will meet consecutively starting at 9:00 a.m.

January 9, 1995: The *Interoperability* and *Spectrum Requirements* Subcommittee will meet consecutively starting at 9:00 a.m.

January 10, 1995: The *Operational Requirements* Subcommittee will meet starting at 9:00 a.m.

The agenda for each meeting is as follows:

1. Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work
5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

The tentative schedule and general location of future meetings of the Subcommittees of the Public Safety Wireless Advisory Committee are as follows:

February 28, 29, March 1 in Orlando, Florida
April, 1996 in San Diego, CA
May, 1996 at Scott AFB, Illinois (near St Louis, MO)
June, 1996 in Washington, D.C.

The tentative schedule and general location of the next full meetings of the Public Safety Wireless Advisory Committee are:

December 15, 1995, (reference Public Notice No. WT 95–32) in Washington, D.C.; June 1996, in Washington, D.C.

The Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee are William Donald Speights, NTIA, and John J. Borkowski, FCC. For public inspection, a file designed WTB–1 is maintained in the Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, Room 8010, 2025 M Street, N.W., Washington, D.C. 20554.

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 95–20551 Filed 12–14–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Flood Insurance Program; Rebating Agents' Commissions

AGENCY: Federal Insurance Administration (FEMA).

ACTION: Notice.

SUMMARY: The Federal Insurance Administration (FIA) gives notice that it has rescinded Policy Issuance 5–95,

Rebating Agents' Commissions, issued on October 4, 1995, and requests public comments on rebating of insurance agents' commissions to consumers under the National Flood Insurance Program (NFIP).

DATES: We invite your comments which should be submitted within March 14, 1996.

ADDRESSES: Please submit your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Chief, Claims and Underwriting Division, the Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646–3422.

SUPPLEMENTARY INFORMATION: Where the practice is permitted by State law, licensed insurance agents may rebate a portion of the commission they earn for the sale of a given policy to the insured. This practice typically is used as a sales incentive and marketing tool. While the practice is prohibited in most States, a few States permit the practice. With more insurance producers and agents beginning to sell flood insurance policies, FIA wants the comments of as large a number of interested parties as possible in order to set policy on this issue.

During the past year, FIA received a number of inquiries from producers and Write Your Own (WYO) Companies concerning the rebating of insurance agents' commissions on NFIP policies. FIA consulted with the following three committees that advise the FIA on insurance-related issues: the Flood Insurance Producers National Committee; the Insurance Institute for Property Loss Reduction Flood Insurance Committee; and the Write Your Own Marketing Committee. The Insurance Institute for Property Loss Reduction Flood Insurance Committee did not comment as a committee, but two member companies on that committee responded as individual companies.

On October 4, 1995, FIA issued National Flood Insurance Program (NFIP) Policy Issuance 5–95 which prohibited, under the NFIP, the practice of agents' rebating commissions to consumers. We now rescind Policy Issuance 5–95. Since October 4 interested parties from within and outside the insurance industry have expressed divergent views on how FIA should treat the issue of rebating agents' commissions. In light of the diversity of opinion on this issue, FIA has decided to increase the circle of its advisers and to solicit comments and recommendations from a wider audience than before on the most appropriate policy on the rebating issue.[1]

Dated: December 12, 1995.

Elaine A. McReynolds,

Federal Insurance Administrator.

[FR Doc. 95–30612 Filed 12–14–95; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010776–095.

Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd., Hapag-Lloyd Aktiengesellschaft, Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Nedlloyd Lijnen B.V., Neptune Orient Lines, Ltd., Nippon Yusen Kaisha Line, Orient Overseas Container Line, Inc., Sea-land Service, Inc.

Synopsis: The proposed amendment modifies Article 8.5—Voting and Quorum Requirements to provide that service contracts entered into on or after January 5, 1996, may be amended by majority vote, rather than by unanimous less one vote as currently required for service contract amendments.

Agreement No.: 232–011321–003.

Title: Maersk/Sea-Land Pacific Agreement.

Parties: A.P. Moller-Maersk Line, Sea-Land Service, Inc.

Synopsis: The proposed amendment expands the foreign geographic scope of the Agreement to include all of Asia, excluding Asia Mediterranean ports. It also increases the maximum number of line-haul vessels, and revises Articles 9.2 and 9.3 respectively—Duration and Termination by (1) redefining the ''initial period'' of the Agreement to a time which will expire four years after the effective date of this amendment and (2) increases the notice period required for withdrawal from 9 months to 12 months.

Agreement No.: 224–200133–004.

Title: Port Authority of New York & New Jersey/Sea-Land Service, Inc. Terminal Agreement.

Parties: Port Authority of New York & New Jersey, Sea-Land Service, Inc. (''Sea-Land'').

Synopsis: The proposed amendment provides for the incorporation of a sub-surface environmental baseline at Sea-land's Elizabeth, New Jersey Container Terminal.

Agreement No.: 224–200963.

Title: Alabama State Docks Department/Middle Gulf Stevedoring, Inc. Terminal Agreement.

Parties: Alabama State Docks Department (''Port''), Middle gulf Stevedoring, Inc. (''Middle Gulf'').

Synopsis: The proposed Agreement permits Middle Gulf to provide freight handling services at the Port.

Dated: December 12, 1995.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–30582 Filed 12–14–95; 8:45 am]

BILLING CODE 6730–01–M

[1] Not published in the Federal Register.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Change in Marriage and Divorce Data Available From the National Center for Health Statistics

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: Beginning January 1, 1996, the availability of marriage and divorce data collected by the National Center for Health Statistics (NCHS), CDC, will change. NCHS will continue to collect marital status in all of its population surveys, will continue to obtain detailed information on out-of-wedlock births, and will work with States to obtain summary counts of marriages and divorces. However, detailed data from

States participating in the marriage and divorce components of the Vital Statistics Cooperative Program (VSCP) will no longer be obtained. This change is being made to prioritize programs in a period of tightened resource constraints.

DATES: Written comments regarding these changes in the collection of marriage and divorce data must be received on or before January 15, 1996.

ADDRESSES: Written comments can be sent to the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics, Attention: FR Response, Division of Vital Statistics, Room 840, 6525 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Mary Anne Freedman, Director, Division of Vital Statistics, NCHS, CDC, telephone (301) 436–8951, ext. 112.

SUPPLEMENTARY INFORMATION: Viewed at either the individual level or the population level, marital status is a key variable in health, demographic, and policy research. As a result, data on current marital status and on change in marital status have been collected through a variety of Federal surveys and data systems. Among these systems are health surveys conducted by NCHS, the Current Population Survey conducted by the U.S. Bureau of the Census, and the records-based vital registration system conducted as a cooperative venture (the VSCP) between NCHS and the States. Within the VSCP, current marital status data are collected from birth certificates in the birth registration system, resulting, for example, in data on out-of-wedlock births. Marital status is also collected from death certificates in the death registration system. Data on change in marital status are obtained from marriage and divorce certificates.

NCHS plans to discontinue payments to the States and other vital registration areas for the collection of detailed data from marriage and divorce certificates, but will continue to request counts of marriages performed and divorces granted from all vital registration areas of the U.S. All other NCHS efforts to collect marital status information, including marital status for mothers on birth certificates, will continue.

NCHS data systems are continually being reviewed in light of resource constraints to assure that efforts are focused on the highest priority data needs. At a time when policy issues related to families are of great interest, NCHS has exercised caution to assure that data systems will be available to support monitoring and research interests in key priority areas. Over the last year, NCHS has systematically reviewed the availability and uses of detailed data on marriages and divorces. This review has led to the conclusion that the data most needed for setting policy (e.g., information on family formation, out-of-wedlock births, children living in single parent families) can be obtained through other sources, such as the birth registration system, other NCHS surveys, and the Current Population Survey.

The discontinuation of collection of detailed data from marriage and divorce certificates will result in a loss of data to researchers who currently rely on this data source for information on annual changes in the collective marriage and divorce behavior of the population, including trends and differentials in the propensity to marry, to divorce, and to remarry after divorce or widowhood. However, much of this information is available on a five year cycle from the June Marital History Supplement of the Current Population Survey.

Long-standing concerns about the completeness and quality of detailed marriage and divorce data from the VSCP were an important consideration in reaching the conclusion to discontinue payments to the States. Although the United States Government has collected marriage and divorce data through various methods since 1867, it was not until 1957 that a formal Registration Area was created for reporting detailed marriage data to NCHS; a similar Registration Area was created for divorces in 1958. These Registration Areas include States with adequate programs for collecting marriage and divorce statistics and which meet specific registration and reporting criteria for participation. More recently, NCHS has included marriage and divorce statistics in the VSCP, a contractual arrangement by which NCHS provides support to the State vital statistics programs and through which NCHS receives vital statistics data for analysis and dissemination at the national level.

Working with State vital registration offices and with various users of marriage and divorce data, NCHS has established standard certificates of marriage and divorce. These certificates contain selected data items about marriages and divorces, and certain of these items are required for admission to the registration areas. Due to variation in State laws on registration of marriage and divorce, not all States obtain these basic required items, and not all States have central registration facilities for marriages or divorces or both. At present, 41 States, the District of Columbia, Puerto Rico, and the Virgin Islands participate in the Marriage Registration Area and 31 States, the District of Columbia, and the Virgin Islands participate in the Divorce Registration Area. Detailed data are currently obtained from relatively small systematic samples of marriage and divorce records for these Areas. Although this system has been in place for many years, it has never been completed. Detailed data represent approximately 77 percent of marriages in the nation and 49 percent of divorces. For this reason, in addition to the detailed data, NCHS obtains counts of the number of marriages performed and the number of divorces granted from all States, the District of Columbia, Puerto Rico, and the Virgin Islands.

Fiscal constraints on State vital statistics programs have put stress on state-level quality assurance programs. As a result, in addition to the problem of coverage completeness, the quality of detailed marriage and divorce data has deteriorated. This deterioration is reflected mostly by the fact that, in some States, the response rates for certain key variables have fallen well below the minimum level acceptable to NCHS.

These coverage and quality concerns, the lack of identified resources to upgrade the system, and the availability of marital status data for high-priority needs from other sources have led NCHS, in consultation with data users, to conclude that resources currently devoted to the marriage and divorce component of the VSCP should be redirected to other priority uses.

Dated: December 8, 1995.

Claire V. Broome,

Deputy Director, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–30566 Filed 12–14–95; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 95M–0394]

Datascope Corp.; Premarket Approval of the VasoSeal Vascular Hemostasis Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Datascope Corp., Montvale, NJ, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the VasoSeal Vascular Hemostasis Device (VHD). FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of

September 29, 1995, of the approval of the application.

DATES: Petitions for administrative review by January 16, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Christopher M. Sloan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243.

SUPPLEMENTARY INFORMATION: On February 3, 1992, Datascope Corp., Montvale, NJ 07645, submitted to CDRH an application for premarket approval of the VasoSeal Vascular Hemostasis Device. The device is a vascular hemostasis device and is indicated for use in reducing time to hemostasis at the femoral arterial puncture site in patients who have undergone diagnostic angiography or percutaneous transluminal coronary angioplasty (PTCA) procedures using an 8 French or smaller procedural sheath. The VasoSeal VHD is also indicated for use in PTCA patients when immediate sheath removal is desired.

On May 8, 1995, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application.

On September 29, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 16, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 29, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–30610 Filed 12–14–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95M–0396]

Karl Storz Endoscopy-America, Inc.; Premarket Approval of Storz Modulith Lithotripter, Model SL20

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Karl Storz Endoscopy-America, Inc., Kennesaw, GA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Storz Modulith Lithotripter, Model SL20. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 17, 1995, of the approval of the application.

DATES: Petitions for administrative review by January 16, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John H. Baxley, Center for Devices and Radiological Health (HFZ–472), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION: On November 24, 1993, Karl Storz Endoscopy-America, Inc., Kennesaw, GA 30144, submitted to CDRH an application for premarket approval of the Storz Modulith Lithotripter, Model SL20. The device is an extracorporeal shock wave lithotripter and is indicated for use in the noninvasive fragmentation of urinary calculi in the kidney and upper ureter.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On February 17, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's

action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 16, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 4, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–30611 Filed 12–14–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[ORD–082–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act

October 1995.

AGENCY: Health Care Financing Administration (HCFA, HHS).

ACTION: Notice.

SUMMARY: This notice lists new proposals for Medicaid demonstration projects submitted to the Department of Health and Human Services during the month of October 1995 under the authority of section 1115 of the Social Security Act. This notice also lists proposals that were approved, disapproved, pending, or withdrawn during this time period. (This notice can be accessed on the Internet at HTTP://WWW.SSA.GOV/HCFA/HCFAHP2.HTML.)

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Susan Anderson, (410) 786–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the Federal Register (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

As part of our procedures, we publish a notice in the Federal Register with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process.

II. Listing of New, Pending, Approved, and Withdrawn Proposals for the Month of October 1995

A. Comprehensive Health Reform Programs

1. New Proposals

No new proposals were received during the month of October.

2. Pending Proposals

Demonstration Title/State: Better Access for You (BAY) Health Plan Demonstration—Alabama.

Description: Alabama proposes to create a mandatory managed care delivery system in Mobile County for non-institutionalized Medicaid beneficiaries and an expansion population of low-income women and children. The network, called the Bay Health Network, would be administered by the PrimeHealth Organization, which is owned by the University of South Alabama Foundation. The State also proposes to expand family planning benefits for pregnant women whose income is less than 133 percent of the Federal poverty level.

Date Received: July 10, 1995.

State Contact: Vicki Huff, Director, Managed Care Division, Alabama Medicaid Agency, P.O. Box 5624, Montgomery, AL 36103–5624, (334) 242–5011.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Arizona Health Care Cost Containment System (AHCCCS)—Arizona.

Description: Arizona proposes to expand eligibility under its current section 1115 AHCCCS program to individuals with incomes up to 100 percent of the Federal poverty level.

Date Received: March 17, 1995

State Contact: Mabel Chen, M.D., Director, Arizona Health Care Cost Containment System, 801 East Jefferson, Phoenix, AZ 85034, (602) 271–4422.

Federal Project Officer: Joan Peterson, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: The Georgia Behavioral Health Plan—Georgia.

Description: Georgia proposes to provide behavioral health services under a managed care system through a

section 1115 demonstration. The plan would be implemented by regional boards that would contract with third party administrators to develop a network of behavioral health providers. The currently eligible Medicaid population would be enrolled in the program and would have access to a full range of behavioral health services. Once the program realizes savings, the State proposes to expand coverage to individuals who are not otherwise eligible for Medicaid.

Date Received: September 1, 1995.

State Contact: Margaret Taylor, Coordinator for Strategic Planning, Department of Medical Assistance, 1 Peachtree Street, NW, Suite 27–100, Atlanta, GA 30303–3159, (404) 657–2012.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: MediPlan Plus—Illinois.

Description: Illinois seeks to develop a managed care delivery system using a series of networks, either local or statewide, to tailor its Medicaid delivery system to the needs of local urban neighborhoods or large rural areas.

Date Received: September 15, 1994.

State Contact: Tom Toberman, Manager, Federal/State Monitoring, 201 South Grand Avenue East, Springfield, IL 62763, (217) 782–2570.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Community Care of Kansas—Kansas.

Description: Kansas proposes to implement a ''managed cooperation demonstration project'' in four predominantly rural counties, and to assess the success of a non-competitive managed care model in rural areas. The demonstration would enroll persons currently eligible in the Aid to Families with Dependent Children (AFDC) and AFDC-related eligibility categories, and expand Medicaid eligibility to children ages 5 and under with family incomes up to 200 percent of the Federal poverty level.

Date Received: March 23, 1995.

State Contact: Karl Hockenbarger, Kansas Department of Social and, Rehabilitation Services, 915 Southwest Harrison Street, Topeka, KS 66612, (913) 296–4719.

Federal Project Officer: Jane Forman, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–04, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Louisiana Health Access—Louisiana.

Description: Louisiana proposes to implement a fully capitated statewide managed care program. A basic benefit package and a behavioral health and pharmacy wrap-around would be administered through the managed care plans. The State intends to expand Medicaid eligibility to persons with incomes up to 250 percent of the Federal poverty level; those with incomes above 133 percent of the Federal poverty level would pay all or a portion of premiums.

Date Received: January 3, 1995.

State Contact: Carolyn Maggio, Executive Director, Bureau of Research and Development, Louisiana Department of Health and Hospitals, P.O. Box 2870, Baton Rouge, LA 70821–2871, (504) 342–2964.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Missouri.

Description: Missouri proposes to require Medicaid beneficiaries to enroll in managed care delivery systems, and extend Medicaid eligibility to persons with incomes below 200 percent of the Federal poverty level. As part of the program, Missouri would create a fully capitated managed care pilot program to serve non-institutionalized persons with permanent disabilities on a voluntary basis.

Date Received: June 30, 1994.

State Contact: Donna Checkett, Director, Division of Medical Services, Missouri Department of Social Services, P.O. Box 6500, Jefferson City, MO 65102–6500, (314) 751–6922.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: The Granite State Partnership for Access and Affordability in Health Care—New Hampshire.

Description: New Hampshire proposes to extend Medicaid eligibility to adults with incomes below the AFDC cash standard and to create a public insurance product for low- income workers. The State also seeks to implement a number of pilot initiatives to help redesign its health care delivery system.

Date Received: June 14, 1994.

State Contact: Barry Bodell, New Hampshire Department of Health and Human Services, Office of the Commissioner, 6 Hazen Drive, Concord, NH 03301–6505, (603) 271–4332.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: The Partnership Plan—New York.

Description: New York proposes to move most of the currently eligible Medicaid population and Home Relief (General Assistance) populations from a primarily fee-for-service system to a managed care environment. The State also proposes to establish special needs plans to serve individuals with HIV/AIDS and certain children with mental illnesses.

Date Received: March 17, 1995.

State Contact: Richard T. Cody, Deputy Commissioner, Division of Health and Long Term Care, 40 North Pearl Street, Albany, NY 12243, (518) 474–9132.

Federal Project Officer: Debbie Van Hoven, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: State of Texas Access Reform (STAR)—Texas.

Description: Texas is proposing a section 1115 demonstration that will restructure the Medicaid program using competitive managed care principles. A focal point of the proposal is to utilize local governmental entities (referred to as Intergovernmental Initiatives (IGIs)) and to make the IGI responsible for designing and administering a managed care system in its region. Approximately 876,636 new beneficiaries would be served during the 5-year demonstration in addition to the current Medicaid population. Texas proposes to implement the program in June 1996.

Date Received: September 6, 1995.

State Contact: Cathy Rossberg, State Medicaid Office, P.O. Box 13247, Austin, TX 78711, (512) 502–3224.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Section 1115 Demonstration Waiver for Medicaid Expansion—Utah.

Description: Utah proposes to expand eligibility for Medicaid to all individuals with incomes up to 100 percent of the Federal poverty level

(subject to limited cost sharing) and to enroll all Medicaid beneficiaries in managed care plans. The State also proposes to streamline eligibility and administrative processes and to develop a subsidized small employer health insurance plan.

Date Received: July 5, 1995.

State Contact: Michael Deily, Acting Division Director, Utah Department of Health, Division of Health Care Financing, 288 North 1460 West, P.O. Box 142901, Salt Lake City, UT 84114–2901, (801) 538–6406.

Federal Project Officer: David Walsh, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. Approved Conceptual Proposals (Awards of Waivers Pending).

No conceptual proposals were approved during the month of October.

4. Approved Grant Proposals (Award of Waivers Pending).

No grant proposals were awarded during the month of October.

5. Approved Proposals.

The following comprehensive health reform proposals were approved during the month of October.

Demonstration Title/State: Kentucky Partnership Plan—Kentucky.

Description: The State was awarded a demonstration to implement the ''Kentucky Partnership Plan,'' an amendment to its original proposal. Under the demonstration, the State will be divided into eight managed care regions incorporating both public and private providers into a single managed care network which will offer the standard State Medicaid benefit package to all non-institutionalized Medicaid beneficiaries. Mental health and long-term care services will continue to be offered through the fee-for-service system.

Date Received: June 19, 1995.

Date Approved: October 6, 1995.

State Contact: Larry A. McCarthy, Commonwealth of Kentucky, Department for Medicaid Services, 275 East Main Street, Frankfort, KY 40621, (502) 564–8196.

Federal Contact: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: SoonerCare—Oklahoma.

Description: Oklahoma will implement a 5-year statewide managed care demonstration using both fully and partially capitated delivery systems. The emphasis of the program is to address access problems in rural areas by encouraging the development of rural-based managed care initiatives. The State will employ traditional fully capitated managed care delivery models for urban areas and will introduce a series of partial capitation models in the rural areas of the State. All currently eligible, non-institutionalized Medicaid beneficiaries will be enrolled during the first 2 years of the project.

Date Received: January 6, 1995.

Date Approved: October 12, 1995.

State Contact: Leigh Brown, Oklahoma Health Care Authority, 4545 North Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105, (405) 530–3269.

Federal Project Officer: Patricia Selinger, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

6. Disapproved Proposals

No comprehensive health reform proposals were disapproved during the month of October.

7. Withdrawn Proposals

No comprehensive health reform proposals were withdrawn during the month of October.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

The following proposal was received during the month of October:

Demonstration/Title: Medicaid Family Planning Services for Women of Childbearing Age—Arkansas.

Description: Arkansas seeks to extend Medicaid eligibility for family planning services only to postpartum women under 133 percent of the Federal poverty level who would have lost benefits 60 days after delivery. The demonstration will streamline the application process for these women and make income requirements less stringent. Women will be eligible for family planning benefits for 5 years or the length of the demonstration.

Date Received: October 2, 1995.

State Contact: David Rickard, Arkansas Department of Human Services, 329 Donaghey Building, P.O. Box 1437, Little Rock, AK 72203–1437, (501) 682–8650.

Federal Contact: Rosemarie Hakim, Ph.D, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

2. Pending Proposals

Demonstration Title/State: Alternatives in Medicaid Home Care Demonstration—Colorado.

Description: Colorado proposes to conduct a pilot project that eliminates the restriction on provision of Medicaid home health services in locations other than the beneficiary's place of residence. The proposal would also permit nursing aides to perform functions that historically have been provided only by skilled nursing staff. Medicaid beneficiaries participating in the project will be adults (including both frail elderly clients and younger clients with disabilities) who can live independently and self-direct their own care. The project would provide for delegation of specific functions from nurses to certified nurses aides, pay nurses for shorter supervision and monitoring visits, and allow higher payments to aides performing delegated nursing tasks. Currently, home health agency nursing and nurse aide services are paid on a per visit basis. Each visit is approximately 2–4 hours in duration, and recipients must require skilled, hands-on care.

Date Received: June 3, 1995.

State Contact: Dann Milne, Director, Department of Health Care Policy, and Financing, 1575 Sherman Street, Denver, CO 80203–1714, (303) 866–5912.

Federal Project Officer: Phyllis Nagy, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration/Title: Integrated Care and Financing Project Demonstration—Colorado.

Description: Colorado proposes to conduct an Integrated Care and Financing Project demonstration. Specifically, the Colorado Department of Health Care Policy and Financing proposes to add institutional and community-based long-term care services to a health maintenance organization (HMO) and make the HMO responsible for providing comprehensive medical and supportive services through one capitated rate. The project would include all Medicaid eligibility groups, including individuals with dual eligibility.

Date Received: September 28, 1995.

State Contact: Dann Milne, Office of Long-Term Care System Development, State of Colorado Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, CO 80203–1714, (303) 866–5912.

Federal Contact: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Georgia's Children's Benefit Plan—Georgia.

Description: Georgia submitted a section 1115 proposal entitled ''Georgia Children's Benefit Plan'' to provide preventive and primary care services to children aged 1 through 5 living in families with incomes between 133 percent and 185 percent of the Federal poverty level. The duration of the project is 5 years with proposed project dates of July 1, 1995 to June 30, 2000.

Date Received: December 12, 1994.

State Contact: Jacquelyn Foster-Rice, Georgia Department of Medical Assistance, 2 Peachtree Street Northwest, Atlanta, GA 30303–3159, (404) 651–5785.

Federal Project Officer: Maria Boulmetis, Health Care Financing, Administration, Office of Research and Demonstrations, Mail

Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Services Section 1115 Waiver Request—Michigan.

Description: Michigan seeks to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level, and to provide an additional benefit package consisting of home visits, outreach services to identify eligibility, and reinforced support for utilization of services. The duration of the project is 5 years.

Date Received: March 27, 1995.

State Contact: Gerald Miller, Director, Department of Social Services, 235 South Grand Avenue, Lansing, MI 48909, (517) 335–5117.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Montana Mental Health Access Plan—Montana.

Description: Montana proposes to provide all mental health services for current Medicaid-eligible individuals through managed care and to expand Medicaid eligibility to persons with incomes up to 200 percent of the Federal poverty level. Newly eligible individuals would receive only mental health benefits, and would not be eligible for other health services under the demonstration. A single statewide contractor would provide the mental health services and also determine eligibility, perform inspections, and handle credentialing.

Date Received: June 16, 1995.

State Contact: Nancy Ellery, State Medicaid Director, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 North Sanders, Helena, MT 59604–4210, (406) 444–4540.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Proposal—New Mexico.

Description: New Mexico proposes to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level.

Date Received: November 1, 1994.

State Contact: Bruce Weydemeyer, Director, Division of Medical Assistance, P.O. Box 2348, Santa Fe, NM 87504–2348, (505) 827–3106.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: CHOICES—Citizenship, Health, Opportunities, Interdependence, Choices and Supports—Rhode Island.

Description: Rhode Island proposes to consolidate all current State and Federal funding streams for adults with developmental disabilities under one program using managed care/managed competition.

Date Received: April 5, 1994.

State Contact: Susan Babin, Department of Mental Health, Retardation, and Hospitals, Division of Developmental Disabilities, 600 New London Avenue, Cranston, RI 02920, (401) 464–3234.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Services Eligibility Requirements Waiver—South Carolina.

Description: South Carolina proposes to extend Medicaid coverage for family planning services for 22 additional months to postpartum women with monthly incomes under 185 percent of the Federal poverty level. The objectives of the demonstration are to increase the number of reproductive age women receiving either Title XIX or Title X funded family planning services following the completion of a pregnancy, increase the period between pregnancies among mothers eligible for maternity services under the expanded eligibility provisions of Medicaid, and estimate the overall savings in Medicaid spending attributable to providing family planning services to women for 2 years postpartum. The duration of the proposed project would be 5 years.

Date Received: May 4, 1995.

State Contact: Eugene A. Laurent, Executive Director, State Health and Human Services Finance Commission, P.O. Box 8206, Columbia, SC 29202–8206, (803) 253–6100.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Wisconsin.

Description: Wisconsin proposes to limit the amount of exempt funds that may be set aside as burial and related expenses for SSI-related Medicaid beneficiaries.

Date Received: March 9, 1994.

State Contact: Jean Sheil, Division of Economic Support, Wisconsin Department of Health and Social Services, 1 West Wilson Street, Room 650, P.O. Box 7850, Madison, WI 53707, (608) 266–0613.

Federal Project Officer: J. Donald Sherwood, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–16–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. Approved Conceptual Proposals (Award of Waivers Pending)

No conceptual proposals were awarded during the month of October.

4. Approved Proposals

The following proposal was approved during the month of October.

Demonstration Title/State: Demonstration of Integrated Care Management Systems for High-Cost/High-Risk Medicaid Beneficiaries—Maryland.

Description: Maryland is testing a new case management delivery system for high-cost/high-risk Medicaid beneficiaries and those at risk to become high-cost. The program seeks to maintain or improve access to providers and the quality of the care provided. The demonstration also should lower health care costs by reducing hospital readmission rates and by maintaining patients in the lowest-cost medically appropriate setting. The University of Maryland Baltimore County Center for Health Program Development and Management, under contract to the State, is responsible for the demonstration's operations.

Date Received: July 8, 1994.

Date Approved: October 6, 1995.

State Contact: Martin P. Wasserman, M.D., J.D., Department of Health and Mental Hygiene, State of Maryland, 201 West Preston Street, Baltimore, MD 21201, (410) 225–6500.

Federal Project Officer: William D. Clark, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

5. Disapproved Proposals

No proposals were disapproved during the month of October.

6. Withdrawn Proposals

No proposals were withdrawn during the month of October.

IV. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments.)

Dated: December 8, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–30559 Filed 12–14–95; 8:45 am]

BILLING CODE 4120–01–P

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) has made final findings of scientific misconduct in the following case:

Harry L. June, Ph.D., Indiana University-Purdue University at Indianapolis: On November 21, 1995, ORI found that Harry L. June, Ph.D., Indiana University-Purdue University (IUPUI) at Indianapolis, committed scientific misconduct by falsifying three letters of recommendation submitted with and in support of a FIRST Award application to the Public Health Service (PHS).

Dr. June has entered into a Voluntary Exclusion Agreement with ORI in which he has accepted ORI's finding and has agreed to exclude himself voluntarily, for the three (3) year period beginning November 21, 1995, 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.

In addition, Dr. June has voluntarily agreed to accept the administrative sanctions imposed by IUPUI, which include requirements that Dr. June:

(1) Take a course in research ethics;

(2) Be supervised by a senior faculty member for not less than three years; and

(3) Submit all grant applications to his supervisor for review for at least one month prior to the agency deadline and to the Dean's office at least two weeks prior to the agency deadline.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–30602 Filed 12–14–95; 8:45 am]

BILLING CODE 4160–17–P

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities Under OMB Review

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–0525.

Evaluation of High Risk Youth Substance Abuse Prevention Initiatives—New—The Center for Substance Abuse Prevention (CSAP) will conduct a cross-site evaluation of approximately 50 demonstration projects targeting high risk youth to assess the effectiveness of the demonstration program in: (1)preventing and/or reducing substance abuse among at-risk youth; and (2) intervention strategies for reducing selected risk factors and enhancing protective factors. Youth participating in the programs and comparison group youth will complete self-administered questionnaires at four points in time, including baseline, program exit, and 6 months and 18 months following program exit. The annual burden estimate is shown below:

	Number of Respondents	Number of responses per respondent	Average burden per response (hours)	Total annual burden (hours)
Youth	12,000	1	0.433 hrs	5,205 hrs

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, D.C. 20503.

Dated: December 11, 1995.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–30565 Filed 12–14–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–66]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real

property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding utilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available, or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Department of Transportation: Ronald Keefer, Director of Administrative services and Property Management, 400 7th Street, SW, Room 10319, Washington, DC 20590; (202) 366–4246; General Services Administration: Brian K. Polly, Assistant Commissioner, Office of Property Disposal, 18th and F streets, NW, Washington, DC 20585; (202) 501–0052; (These are not toll-free numbers).

Dated: December 8, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 12/15/95

Suitable/Available Properties

Buildings (by State)

New Mexico

Magdalena Dormitory
Poplar and 8th Streets
Magdalena Co: Soccorro NM 87825–
Landholding Agency: GSA
Property Number: 549540006
Status: Excess
Comment: 14 bldgs. consisting of dormitory/dining & storage facilities, apartments & garages, vacant for 8 years, needs rehab, potential utilities
GSA Number: 7–I–NM–0543

Ohio

Natl. Weather Met. Observatory
Huber Heights Co: Montgomery OH
Landholding Agency: GSA
Property Number: 549540005
Status: Excess
Comment: 1100 sq. ft., 1 story, most recent use—office/admin.
GSA Number: 2–C–OH–796

Washington

Hanford Site, 3000 Area
1st Street
Richland Co: Benton WA 99352–
Location: ¼ mile east of Stevens Drive
Landholding Agency: GSA
Property Number: 549540007
Status: Excess
Comment: 16 bldgs. on 70 acres, buildings are concrete block/asbestos siding/wood frame, used for offices/storage, 122,931 sq. ft. total site, pres. of asbestos, Bldg. 1154 on Natl. Register
GSA Number: 10–B–WA–523–B

Land (by State)

Georgia

Land—St. Simons Boathouse
St. Simons Island Co: Glynn GA 31522–0577
Landholding Agency: DOT
Property Number: 879540003
Status: Unutilized
Comment: .08 acres, most recent use—pier and dockage for Coast Guard boats

Washington

Second Stadium Home Site
1701 Martin Luther King Blvd.
Seattle Co: King WA 98144–
Landholding Agency: GSA
Property Number: 549540008
Status: Excess
Comment: 1.5061 acres of unimproved land, most recent use—temporary storage for construction equipment
GSA Number: 9–GRI–WA–543

[FR Doc. 95–30426 Filed 12–14–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–056–06–1610–00]

Availability of an Environmental Assessment and Proposed Arcata Resource Management Plan Amendment for the Mattole Estuary and Inclusion of Additional Lands into the Existing Mattole ACEC

AGENCY: Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that an environmental assessment (EA) written by the Bureau of Land Management (BLM) is available for public comment. The Environmental Assessment proposes to amend the existing Arcata Resource Management Plan (RMP) to do the following: (a) Change the designation of lands acquired in 1994 on the north side of the Mattole River, plus any lands which may be acquired by the BLM in the future that are contiguous to or in the general vicinity of the Mattole Estuary from Scattered Tracts Management Area to the King Range Vicinity Management Area; (b) include the aforesaid lands into the existing Mattole Beach Area of Critical Environmental Concern (ACEC);

and (c) withdraw the lands from all forms of mineral entry.

DATES: Public comments must be submitted by February 13, 1996.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, Area Manager, Bureau of Land Management, Arcata Resource Area, 1695 Heindon Road, Arcata, CA 95521–4573. Telephone (707) 825–2300.

SUPPLEMENTARY INFORMATION: The EA was prepared in accordance with the requirements set forth in the Code of Federal Regulations (43 CFR 1610.5) to amend the Arcata Resource Area Management Plan.

The issues and concerns addressed in the EA focus on changing the status of lands north of the Mattole River Estuary as outlined in the above summary.

The King Range Vicinity Management Area contains a more suitable management prescription for public lands contiguous to and in the general vicinity of the King Range National Conservation Area (KRNCA) than does the Scattered Tracts Management Area.

Inclusion of these lands into the Mattole ACEC and withdrawal from all forms of mineral entry would protect the resource values of the lands consistent with the existing ACEC lying within the boundaries of the KRNCA, which was withdrawn from mineral entry by Act of Congress, October 21, 1970 (Pub. L. 91–475).

The EA is available to the public for review. Availability has also been published in local and county newspapers. There will be a 60-day comment period beginning with publication of this notice. Public comments must be in writing and mailed to the above address.

Following the 60-day comment period, action will be taken by the California State Director to approve or disapprove the proposed addition to the ACEC and make a recommendation to withdraw the lands from all forms of mineral entry. Approval of the proposed Arcata RMP amendment by the California State Director will constitute formal designation of the ACEC.

Lynda J. Roush,

Arcata Area Manager.

[FR Doc. 95–29847 Filed 12–14–95; 8:45 am]

BILLING CODE 4310–40–P

[NV–930–1430–01; N–60033]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-competitive sale of public lands in Clark County, Nevada.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of Pub. L. 94–579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719).

Mount Diablo Meridian, Nevada

T. 19 S., R. 62 E.,
Sec. 14, S½SE½,
Sec. 23, NE¼NE¼, NW¼NE¼, N½NW¼, SW¼NW¼, SE¼NW¼,
Sec. 24, SW¼SW¼SW¼SW¼.

Containing 282.5 acres, more or less.

This parcel of land is being offered as a non-competitive sale to Las Vegas Motor Speedway, Inc. which proposes to use the land for parking, storage, and related uses for and in conjunction with a motor speedway to be built on privately owned property. The land is not required for any federal purpose. The non-competitive sale is consistent with current Bureau planning for this area and would be in the public interest.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All the oil, gas, sodium, potassium, and saleable minerals in the land so patented, and to it, its permittees, licensees, and lessees the right to prospect for mine and remove the minerals owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. An easement for roads, public utilities, and flood control purposes in accordance with the transportation plan for Clark County.

2. Those rights for a roadway which have been granted to Nevada Department of Transportation by no. Nev-057852 under the Act of August 27, 1958 [72 Stat. 916; 23 U.S.C. 317(A)].

3. Those rights for a power transmission line which have been granted to Nevada Power Company by grant no. N–53399 under the Act of December 21, 1928 (45 Stat. 1057; 43 USC 617D).

Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral material disposal laws. This segregation will terminate upon issuance of a patent of 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada 89108. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94–579 or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

Dated: December 17, 1995.

Mason K. Hall,

Acting District Manager, Las Vegas, NV.

[FR Doc. 95–30540 Filed 12–14–95; 8:45 am]

BILLING CODE 4310-HC-P

[NV–930–1430–01; N–59007]

Partial Cancellation of Proposed Withdrawal; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal insofar as it affects 317.50 acres of public land requested by the Department of the Army, Corps of Engineers for flood control facilities in Clark County, Nevada. This action will open the 317.50 acres to surface entry and mining, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law.

EFFECTIVE DATE: January 16, 1996.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6532.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the Federal Register, 59 FR 60998, November 29, 1994, which temporarily segregated the lands described therein from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The Corps of Engineers

has determined that certain lands will not be needed in connection with the flood control facilities and has cancelled its application for those lands. The lands are described as follows:

Mount Diablo Meridian

T. 22 S., R. 60 E.,
Sec. 8, E½W½SW¼NW¼ and E½W½NW¼SW¼;
Sec. 17, N½SE¼SW¼NE¼, NE¼SE¼NE¼, W½SW¼NE¼SW¼, NE¼SW¼NE¼SW¼, NW¼NE¼SW¼, E½SE¼NW¼SW¼, and W½NW¼SW¼;
Sec. 18, S½NE¼SE¼, SW¼NW¼SE¼, W½SE¼NW¼SE¼, E½NW¼NW¼SE¼, E½NE¼NE¼SW¼, E½NE¼NW¼, E½SE¼NW¼, E½W½NE¼NW¼, E½W½SE¼NW¼, W½NE¼, W½SE¼NE¼, W½NE¼NE¼, W½SE¼NE¼NE¼, and W½E½SE¼NE¼.

The lands described aggregate 317.50 acres in Clark County.

At 9 a.m. on January 16, 1996 the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregation of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on January 16, 1996, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 9 a.m. on January 16, 1996 the lands will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, other segregation of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 1, 1995

William K. Stowers

Lands Team Lead.

[FR Doc. 95–30539 Filed 12–14–95; 8:45 am]

BILLING CODE 4310-HC-P

Fish and Wildlife Service

Endangered and Threatened Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that Region 1 of the U.S. Fish and Wildlife Service has issued the following permits, between April 1, 1995 and September 30, 1995, for incidental take of threatened or endangered species from applications duly received according to section 10 of the Endangered Species Act of 1973, as amended (Act). Each permit listed as issued was granted only after it was determined to be applied for in good faith, and that it was consistent with the Act and applicable regulations.

Name	Permit No.	Issuance date
Fieldstone/La Costa Associates and City of Carlsbad	795759	6/7/95
City of Waterford, CA.	801047	6/9/95
Murray Pacific Corporation	777837	6/26/95
Clark County; Cities of Las Vegas North Las Vegas, Henderson, Boulder City, and Mesquite, NV.; Nevada Department of Transportation	801045	7/11/95
Estate of Edward V. Regli	803749	8/30/95
Nevada Division of State Parks	804120	9/1/95

FOR FURTHER INFORMATION CONTACT: Chief, Division of Consultation and Conservation Planning, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503–231–6241). Please refer to the permit number listed above when requesting information.

Dated: December 8, 1995.

Thomas J. Dwyer,

Deputy Regional Director, Region 1 Portland, Oregon.

[FR Doc. 95–30567 Filed 12–14–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement/Environmental Impact Report and Receipt of Applications for Incidental Take Permits Associated With a Natural Community Conservation Plan/Habitat Conservation Plan for the Central and Coastal Subregion, Orange County, California

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of availability.

SUMMARY: Orange County (lead applicant), the University of California at Irvine, the Transportation Corridor Agency, Metropolitan Water District, Santiago County Water District, Irvine Ranch Water District, The Irvine Company, Chandis-Sherman Companies, and Southern California Edison each have applied to the Fish and Wildlife Service (Service) for 75-year incidental take permits pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). In addition, the Service anticipates that the cities of Anaheim, Costa Mesa, Irvine, Laguna Beach, Laguna Niguel, Lake Forest, Newport Beach, Orange, and Tustin also will apply for individual permits. This notice advises the public that the application package for these related permits is available for public review. The package includes a Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) for the Central and Coastal Subregion of Orange County, a draft Implementing Agreement (IA), and a draft joint programmatic Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

The proposed incidental take would occur due to habitat loss resulting from residential, commercial, and recreational developments with associated infrastructure. The proposed permits would authorize the incidental take of the threatened coastal California gnatcatcher (*Polioptila californica californica*) and endangered peregrine falcon (*Falco peregrinus*). Under special conditions, incidental take also would be authorized for the endangered Riverside fairy shrimp (*Streptocephalus woottoni*), southwestern arroyo toad (*Bufo microscaphus californicus*), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and Pacific pocket mouse (*Perognathus longimembris pacificus*).

The permit applicants also request coverage of an additional 35 unlisted

species (9 plant, 26 animal), including 3 proposed species that occur within the NCCP/HCP area. The NCCP/HCP proposes to conserve all 35 species according to standards required for listed species under the Act. Unlisted covered species would be named on the permits with delayed effective dates. Barring unforeseen circumstances, incidental take of the unlisted covered species would be authorized upon their listing under the Act. Concurrent with the proposed issuance of the Federal permits, the California Department of Fish and Game proposes to issue management authorizations for the 42 species under section 2081 of the California Endangered Species Act.

Although the NCCP has focused on coastal sage scrub (CSS) habitat, in keeping with the legislative intent of the California NCCP Act of 1991 to protect multiple habitat types, the applicants propose to protect 4 additional habitat types to the extent that no additional mitigation or compensation would be required of participating landowners should any species dependent on these habitats be listed during the 75-year permit. These habitat types are: oak woodlands, Tecate cypress forest, cliff and rock, and chaparral (coastal subarea only). Should any species dependent on these habitats be listed, the 10(a)(1)(B) permits would become effective as described above.

Federal approval of the NCCP/HCP is required as part of the special 4(d) rule for the coastal California gnatcatcher (58 FR 65088). Incidental take of the gnatcatcher is allowed under section 4(d) of the Act if take results from activities conducted pursuant to the NCCP Act, NCCP Process Guidelines, and NCCP Southern California Coastal Sage Scrub Conservation Guidelines.

An EIS/EIR has been prepared in order for the Service to comply with the National Environmental Policy Act (NEPA) and for the County and cities to comply with the California Environmental Quality Act (CEQA). The EIS/EIR evaluates the effects on the human environment of the proposed action: issuance of incidental take permits and management authorizations, and approval of the NCCP/HCP and IA. This notice is provided pursuant to section 10(c) of the Act and NEPA regulations (40 CFR 1506.6).

Comments are requested on the NCCP/HCP, IA, and EIS/EIR. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments on the permit application and EIS/EIR should be received on or before January 29, 1996.

ADDRESSES: Comments should be addressed to Mr. Gail C. Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008; facsimile 619–431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Linda R. Dawes, Ph.D., Fish and Wildlife Biologist, at the above address (619–431–9440), or Mr. Tim Neely, Planning and Zoning Administrator, Orange County Environmental Management Agency (714–834–2252).

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the application and EIS/EIR for review should immediately call Dr. Dawes or Mr. Neely at the above telephone numbers. These documents will be available for public inspection at local libraries and at the above offices, by appointment, during normal business hours. Please call Mr. Neely for a list of libraries housing the documents.

Background

The ''take'' of threatened and endangered species is prohibited under section 9 of the Act and its implementing regulations. Take is defined, in part, as killing, harming, or harassing listed species, including significant habitat modification that results in death of or injury to listed species. Under limited circumstances, the Service may issue permits to take listed species if such taking is incidental to otherwise lawful activities. Regulations governing permits are found at Title 50 Code of Federal Regulations 17.22 and 17.32.

The NCCP/HCP subregional planning area covers 208,000 acres, with 104,000 acres remaining as natural lands which are subject to intense development pressure. Exclusive of the Cleveland National Forest, the subregion contains 30,833 acres of CSS supporting approximately 600 pairs of California gnatcatchers. The NCCP/HCP proposes the conversion of 7,395 acres (24%) of CSS habitat which could result in incidental take of approximately 109 pairs of California gnatcatchers by participating landowners. This level of take is considered fully mitigated by the NCCP/HCP. Twenty additional pairs of gnatcatchers potentially may be taken by non-participating landowners. These landowners would have the option of paying a mitigation fee, or undertaking an individual HCP or Section 7 consultation under the Act.

As mitigation for the proposed incidental take, the applicants propose the establishment of a 38,738-acre reserve, including 12 of 13 major vegetative communities present within the subregion. The reserve would contain more than 18,800 acres of CSS, 7,300 acres of chaparral, 6,100 acres of grasslands, 1,800 acres of riparian habitat, 950 acres of woodland, and 200 acres of forest. The NCCP/HCP contains a comprehensive management plan including, but not limited to, fire management, grazing management, management of recreation and public access, and habitat restoration. The foregoing actions would be funded through the creation by participating landowners of an endowment in excess of $10.6 million, and by mitigation fees contributed by non-participating landowners who elect to use this option rather than pursue an individual HCP. Additionally, to supplement the reserve, 3,990 acres would be designated as either special linkage or existing use areas and 3,960 acres would remain as public open space. The application also proposes planning guidelines for the North Ranch area which are protective of the reserve and subregional biodiversity.

Incidental take of other listed species which potentially occur within the subregion would be subject to conditions specific for each species. In general, minor occurrences would be mitigated by habitat enhancement or restoration within the reserve. Occurrences which represent significant conservation value would be handled on a case-by-case basis. No take would be authorized in the North Ranch policy plan area. Specific provisions for the pocket mouse include the creation of a temporary 22-acre reserve on the Dana Point headlands and $700,000 to study alternative conservation measures.

In compliance with NEPA, the EIS/EIR examines the environmental impacts of issuing the proposed incidental take permit and the effects of implementing the proposed habitat conservation plan and alternative conservation plans. Although dozens of alternative conservation configurations and mechanisms were considered, the EIS/EIR analyzes 4 alternatives in detail, including the proposed action.

All individuals and agencies are urged to comment on the EIS/EIR, NCCP/HCP, and IA. All comments received by the closing date will be considered in finalizing NEPA compliance and permit issuance or denial.

Dated: December 6, 1995.

Thomas J. Dwyer,

Deputy Regional Director, Region 1 Portland, Oregon.

[FR Doc. 95–30350 Filed 12–14–95; 8:45 am]

BILLING CODE 4310–55–P

INTERSTATE COMMERCE COMMISSION

Notice of Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. The parent corporation and principal office is: ARR–MAZ PRODUCTS, L.P., 621 Snively Avenue, Winter Haven, FL 33880, 941–293–7884.

2. The wholly owned subsidiary which will participate in the operation is: AMP Trucking, Inc., 1001 American Superior Blvd., Winter Haven, FL 33880, 941–293–7884.

States of Incorporation are: Delaware, Florida, Louisiana, North Carolina.

Vernon A. Williams,

Secretary.

FR Doc. 95–30560 Filed 12–14–95; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32814]

Gateway Western Railway Company; Trackage Rights Exemption; The Atchison, Topeka and Santa Fe Railway Company

The Atchison, Topeka and Santa Fe Railway Company (ATSF) has agreed to grant limited local trackage rights to Gateway Western Railway Company (GWWR) over approximately 8.3 miles of rail line from milepost 1.7 at Santa Fe Junction in Kansas City, MO, to milepost 10.0 at Morris, KS.[1]

GWWR contends that the trackage rights will allow it access to two shippers on ATSF's line in Kansas City, KS. Accordingly, those two shippers will obtain additional rail service options and GWWR will have new potential sources of traffic. The trackage rights were to become effective on December 1, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission[2] and served on: Thomas J. Litwiler, Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: December 8, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–30561 Filed 12–14–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–30]

Harold R. Schwartz, M.D.; Denial of Application

On March 2, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Harold R. Schwartz, M.D., (Respondent) of Houston, Texas, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that:

(1) In February 1992, a DEA audit of a Houston area pharmacy, and a subsequent review of prescription records, revealed that in 1991 and early 1992, the Respondent routinely prescribed combinations of Tylenol with codeine, Valium, and Phenergan with codeine, to numerous individuals when he knew or should have known that the combination of these drugs was highly abused on the streets.

(2) On March 24, April 7, and April 21, 1992, the Respondent prescribed 24 Tylenol No. 4 and 18 Valium 10 mg. to an undercover officer for no legitimate medical reason.

(3) Following the execution of a Federal search warrant at the Respondent's office of July 7, 1992, the Respondent voluntarily surrendered his DEA Certificate of Registration, AS0873198, as well as his State of Texas Controlled Substances Registration Certificate. However, on February 1, 1993, his Texas Controlled Substances Registration Certificate was reinstated.

On March 31, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Houston, Texas, on November 9, 1994, before Administrative Law Judge Mary Ellen Bittner. At the hearing both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On March 2, 1995, Judge Bittner issued her Opinion and Recommended Ruling, recommending that the Respondent's application be denied. Neither party filed exceptions to her decision, and on April 5, 1995, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact of law.

The Deputy Administrator finds that on January 19, 1993, the Respondent Prepared an Application for Registration under the Controlled Substances Act of 1970 as a practitioner for handling controlled substances in Schedules II through V. The Respondent has practiced medicine in Houston, Texas, since 1951. At the hearing before Judge Bittner, the Respondent testified that he maintained a solo practice in internal medicine consisting mostly of poor patients, some of whom were covered by Medicare or Medicaid. The Respondent further stated that his wife had died in 1987, and that he resided with his son, who suffered from panic disorder and was unable to leave home.

[1] On December 1, 1995, GWWR filed a corrected statement with regard to the milepost markers and the approximate total mileage involved in this transaction. This notice includes the updated figures.

[2] Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

He testified that he was the sole provider for his son.

At the hearing, a DEA Diversion Investigator testified that during an audit of a Houston Pharmacy on January 27, 1992, he discovered that several individuals had received prescriptions from the Respondent for a combination of Tylenol No. 4 or Phenergan with codeine, and Valium or Xanax. The Investigator testified that the prescriptions were unusual because of the combination of substances prescribed, and because many of the prescriptions were written to different patients claiming the same address. Further, the Respondent had issued these prescriptions to individuals who were also receiving prescriptions for controlled substances from other physicians. Tylenol No. 4 with codeine, Phenergan with codeine, Valium, and Xanax are all controlled substances. The investigator also stated that the combination of controlled substances prescribed by the Respondent were popular with crack cocaine users, who take these drugs to ease the ''high'' induced by cocaine.

In February 1992, the Investigator performed surveys of prescriptions issued by the Respondent from March 1991 through April 1992, at seven Houston-area pharmacies, finding that the Respondent wrote seventy-nine prescriptions for a total of 3,851 dosage units of controlled substances. As a result of this information, the Investigator implemented an undercover investigation of the Respondent with the assistance of a Detective from the Harris County, Texas, Sheriff's Department. On all of the detective's undercover visits to the Respondent's office, the Detective wore a transmitter, and transcripts of his conversations with the Respondent were in evidence.

At the hearing, the Detective testified that on March 24, 1992, he went to the Respondent's office, he did not complain of any medical ailments, but that he did tell the Respondent that he wanted Tylenol No. 4 because ''I just kinda chill out, I feel good, it makes me feel real good.'' The Respondent took the Detective's blood pressure and conducted a very brief examination. After providing the Detective with a warning about the use of the controlled substances he had requested, the Respondent gave the Detective a prescription for 24 Tylenol No. 4, 18 Valium 10 mg., and Procardia, a non-controlled substance, for high blood pressure. The Respondent prescribed the Tylenol No. 4 for ''lower back pain,'' although the Detective did not complain of this condition.

On April 7, 1992, the Detective again visited the Respondent, who took his blood pressure, but did not examine him. The Respondent again admonished the Detective about the addictive potential of Valium and Tylenol No. 4, but then issued prescriptions for 18 Valium 10 mg., 24 Tylenol No. 4, and for a non-controlled substance. Also, on April 21, 1992, the Detective visited the Respondent, who again admonished him regarding the use of Tylenol No. 4, asked him if he needed Valium, and prescribed 18 Valium 10 mg., 24 Tylenol No. 4, and a non-controlled substance. The Detective testified that the Respondent did not examine him beyond taking his blood pressure, and when asked, the Detective had told him that he did not have back pain.

On July 7, 1992, the Investigator executed a search warrant and a grand jury subpoena, seizing various records from the Respondent's office, to include the patient chart for the Detective as well as other patients' charts. The Investigator informed the Respondent of the reason for the execution of both the subpoena and the search warrant, and following these discussions, the Respondent voluntarily surrendered his DEA Certificate of Registration, as well as his Texas State controlled substances registration.

At the hearing before Judge Bittner, Dr. Joseph Coppola, an associate professor of emergency medicine and internal medicine at the University of Texas Medical School, testified that on July 22, 1992, he had reviewed several of the Respondent's records, including the Detective's treatment record. Dr. Coppola then testified about his findings as to individual patient's records, concluding that in six instances the Respondent had prescribed controlled substances in ''inappropriate and [in some instances] dangerous'' combinations, and that the Respondent's charts contained incomplete histories and lacked physical examination notations adequate to justify the prescriptions issued to the patients. Dr. Coppola stated that in some charts the patient would make multiple visits, complain of the same symptoms each visit, and yet the Respondent would prescribe controlled substances without conducting tests or using other diagnostic techniques to determine the cause of the patient's continuing condition. Dr. Coppola testified that in some instances the patients' conditions did not justify the controlled substances prescribed over the extended period of time reflected in the patients' records. He observed that in many of the cases he had reviewed, the controlled substances prescribed by the Respondent were not appropriate, ''[b]ecause of their propensity toward habituation, addiction, withdrawal syndromes, harm to the patient, inability to perform normal, everyday functions to include driving an automobile * * * certainly this combination of medications in a person is detrimental and harmful on a long-term basis.'' Dr. Coppola stated that in several instances the patients' records indicated that the patients were exhibiting drug-seeking behavior.

Dr. Coppola, after reviewing the chart entries for the Detective, testified that if he had had a patient who acted in the manner of the Detective, ''[i]n a dignified, professional way, I would throw him out of my office * * * because he is drug-seeking.'' Further, he testified that Tylenol No. 4 and Valium were not substances prescribed to treat high blood pressure, and that the transcripts of the Detective's subsequent visits reinforced his opinion that the Detective was engaging in drug-seeking behavior. Dr. Coppola also testified that the Respondent's prescribing of controlled substances in the combinations prescribed to the Detective, a non-addicted person, could result in symptoms ranging from extreme somnolence, motor inability, respiratory arrest, to even death. Finally, Dr. Coppola concluded that the Respondent did not prescribe controlled substances in the usual course of professional practice, nor for a legitimate medical purpose.

The Respondent testified that he prescribed tranquilizers as stress-reducers for hypertensive patients, and that even if he had known the Detective was a law enforcement officer he would have prescribed Valium and Tylenol, because the Respondent ''found he was a sick man.'' The Respondent also stated that Dr. Coppola was ''right to a degree'' with respect to the Respondent's treatment of the other patients, because the controlled substances he prescribed were addictive, but he ''really didn't know that these were street substances.'' He testified that he had not knowingly treated anyone who used crack concaine, and he averred that he did not use very good judgment: ''I was too trusting. I was taken advantage of.'' Further, the Respondent conceded that he kept poor records, and that he would not repeat his misconduct.

However, he also testified that he ''really didn't agree'' with the Texas State Board of Medical Examiners' finding that he had prescribed controlled substances to the Detective for a nontherapeutic purpose or in a nontherapeutic manner. Further, he

stated that he had surrendered his controlled substances registrations because the Investigator had advised him that he could probably avoid action by a grand jury if he so acted, but that by signing the surrenders, he had not intended to admit to any wrongdoing. Finally, the Respondent testified about his need for his DEA Certificate of Registration in order to continue effectively his medical practice.

The record also demonstrates that on December 15, 1992, the grand jury had advised the Texas court that it had failed to find a bill of indictment against the Respondent, and on February 1, 1993, the Respondent's state privileges to handle controlled substances were restored. Further, on March 18, 1994, the Respondent appeared before the Medical Board, and on April 14, 1994, the Respondent and the Medical Board entered into an Agreed Order. The Agreed Order reflected that the Respondent had practiced medicine in Texas for forty-nine years with no documented problems or disciplinary actions. However, the Medical Board found that the Respondent had prescribed or administered a drug or treatment ''that was nontherapeutic in nature or in the manner in which [it] was administered or prescribed,'' and that he had, thereby, violated the Medical Practice Act of Texas. The Medical Board then ordered that the Respondent's medical license be restricted for three years, and that various conditions be imposed upon his practice, including that he attend at least fifty hours per year of continuing medical education, to include at least six hours pertaining to recordkeeping or risk management. Further, another physician was to monitor or supervise his medical practice.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny a pending application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989). In this case, the Deputy Administrator agrees with Judge Bittner that factors one, two, and four are relevant in determining whether granting the Respondent's pending application would be inconsistent with the public interest.

As to factor one, ''recommendation of the appropriate state licensing board,'' relevant evidence includes the agreement signed by the Respondent and the Medical Board, wherein the Medical Board found that the Respondent's conduct in prescribing controlled substances to the Detective violated the Medical Practice Act of Texas. In response, in April 1994, the Medical Board placed restrictions upon the Respondent's license to practice medicine, to include requiring the acquisition of continued medical education. The restrictions are in effect for three years. Further, the record demonstrates that the Texas Department of Public Safety has reissued the Respondent's controlled substances registration, but evidence detailing the circumstances surrounding the reinstatement are not in the record.

As to factor two, ''the applicant's experience in dispensing * * * controlled substances,'' the preponderance of the evidence demonstrates that the Respondent dispensed controlled substances to a Detective without a legitimate medical purpose and outside the usual course of professional practice. Specifically, Dr. Coppola provided that conclusion after reviewing the Detective's medical chart and the transcript of the conversations between the Detective and the Respondent preceding the Respondent's issuing prescriptions to the Detective. Further, after reviewing medical charts and prescription patterns in five other cases, Dr. Coppola also concluded that the Respondent prescribed controlled substances to these patients in ''inappropriate and [in some instances] dangerous'' combinations, despite the fact that these patients were exhibiting drug-seeking behavior.

As to factor four, ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances,'' the record reflects that the Grand Jury declined to issue an indictment seeking criminal prosecution against the Respondent after reviewing evidence of his behavior during the same period as reviewed in this proceeding. However, the Medical Board found that the Respondent's conduct did, in fact, violate the Medical Practice Act of Texas, and it levied discipline under that statute in response to its finding.

The Deputy Administrator has previously found that under Federal law, for a controlled substance prescription to be valid, ''it must be written by an authorized individual acting within the scope of normal professional practice for a legitimate medical purpose.'' Harlan J. Borcherding, D.O., 60 FR 28796, 28798 (1995). Although the Respondent was authorized to prescribe controlled substances at the time he issued prescriptions to the Detective, the preponderance of the evidence demonstrates that the prescriptions of Valium and Tylenol No. 4 were issued without a legitimate medical purpose and outside the scope of normal professional practice. Specifically, the Detective dictated which controlled substances he wanted and ultimately received, rather than the Respondent, as the practitioner, determining the medication appropriate for the clinical condition presented by the Detective. As Dr. Coppola testified, such prescribing lacked a legitimate medical purpose and was not in the usual course of professional medical practice. See Borcherding, supra. Therefore, the Deputy Administrator finds, in light of the foregoing, that the Government has met its burden of proof as to factors one, two, and four.

However, the Respondent provided evidence of rehabilitation, including the Texas Department of Public Safety's reinstatement of his controlled substances registration in February 1993, and the agreement with the Medical Board. Further, he acknowledged his recordkeeping failings, and he requested consideration be given to his full cooperation with the investigation. The Respondent also requested the Deputy Administrator consider his lengthy medical career free of prior disciplinary action, and his need for his DEA Certificate of Registration.

However, even acknowledging the Respondent's rehabilitative efforts, the Deputy Administrator agrees with Judge Bittner's conclusions: ''With respect to the likelihood of a recurrence of misconduct, I realize that Respondent asserted that he would be more careful in the future. However, in light of both the extent of his misconduct and his attempts to rationalize his behavior, I am not persuaded that such conduct will not recur.'' The Respondent's

testimony disagreeing with the Medical Board's findings concerning his past conduct, makes questionable his committment to change in his future medical practices to include his prescribing of controlled substances. Therefore, the Deputy Administrator finds that the public interest is best served by denying the Respondent's application at the present time. See, e.g., *Sokoloff* v. *Saxbe,* 501 F.2d 571, 576 (2nd Cir. 1974) (stating that ''permanent revocation'' of a DEA Certificate of Registration may be ''unduly harsh'').

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application of Harold R. Schwartz, M.D., be, and it hereby is, denied. This order is effective January 16, 1996.

Dated: December 11, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–30578 Filed 12–14–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the David-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' are listed by Volume and State:

Volume VI

OREGON
OR950017 (DEC. 15, 1995)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ950003 (FEB. 10, 1995)
NJ950004 (FEB. 10, 1995)
NJ950007 (FEB. 10, 1995)
NJ950015 (FEB. 10, 1995)
New York
NY950003 (FEB. 10, 1995)
NY950009 (FEB. 10, 1995)
NY950039 (FEB. 10, 1995)
NY950040 (FEB. 10, 1995)

Volume II

Pennyslvania
PA950004 (FEB. 10, 1995)
PA950040 (FEB. 10, 1995)

Volume III

Florida
FL950001 (FEB. 10, 1995)
FL950009 (FEB. 10, 1995)
FL950014 (FEB. 10, 1995)
FL950017 (FEB. 10, 1995)
FL950032 (FEB. 10, 1995)
Georgia
GA950032 (FEB. 10, 1995)
GA950039 (FEB. 10, 1995)
Tennessee
TN950005 (FEB. 10, 1995)

Volume IV

Illinois
IL950001 (FEB. 10, 1995)
IL950002 (FEB. 10, 1995)
IL950003 (FEB. 10, 1995)
IL950008 (FEB. 10, 1995)
IL950011 (FEB. 10, 1995)
IL950012 (FEB. 10, 1995)
IL950013 (FEB. 10, 1995)
IL950014 (FEB. 10, 1995)
Illinois
IL950016 (FEB. 10, 1995)
Indiana
IN950024 (FEB. 10, 1995)
Michigan
MI950001 (FEB. 10, 1995)
MI950002 (FEB. 10, 1995)
MI950007 (FEB. 10, 1995)
MI950012 (FEB. 10, 1995)
MI950017 (FEB. 10, 1995)
MI950030 (FEB. 10, 1995)
MI950031 (FEB. 10, 1995)
MI950034 (FEB. 10, 1995)
MI950046 (FEB. 10, 1995)
MI950049 (FEB. 10, 1995)
MI950062 (FEB. 10, 1995)

Volume V

Iowa

IA950004 (FEB. 10, 1995)
Kansas
KS950005 (FEB. 10, 1995)
Nebraska
NE950001 (FEB. 10, 1995)
NE950059 (FEB. 10, 1995)
Texas
TX950001 (FEB. 10, 1995)
TX950002 (FEB. 10, 1995)
TX950007 (FEB. 10, 1995)
TX950008 (FEB. 10, 1995)
TX950013 (FEB. 10, 1995)
TX950014 (FEB. 10, 1995)
TX950019 (FEB. 10, 1995)
TX950069 (FEB. 10, 1995)
TX950081 (FEB. 10, 1995)

Volume VI

Alaska
AK950001 (FEB. 10, 1995)
Colorado
CO950002 (FEB. 10, 1995)
CO950003 (FEB. 10, 1995)
CO950005 (FEB. 10, 1995)
CO950006 (FEB. 10, 1995)
CO950007 (FEB. 10, 1995)
CO950008 (FEB. 10, 1995)
CO950009 (FEB. 10, 1995)
CO950010 (FEB. 10, 1995)
CO950023 (FEB. 10, 1995)
CO950025 (FEB. 10, 1995)
Oregon
OR950001 (FEB. 10, 1995)
Utah
UT950015 (FEB. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 8th day of December 1995.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 95–30391 Filed 12–14–95; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address show below, not later than December 26, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 26, 1995.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 4th day of December, 1995.

Russel Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 12/04/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,664	AE Clevite (Wkrs)	Wauseon, OH	11/16/95	Replacement Auto Parts.
31,665	AT&T Microelectronics (IBEW)	Clark, NJ	11/13/95	Underwater Communication Repeaters.
31,666	Allied Signal (Wkrs)	Eatontown, NJ	10/20/95	Printed Circuit Boards.
31,667	Amity Leather Products Co (Comp)	Albuquerque, NM	11/22/95	Men's & Ladies' Leather Products.
31,668	Amity Leather Products Co (Comp)	Goldsboro, NC	11/21/95	Men's & Ladies Leather Products.
31,669	Arco Corp. (Wkrs)	Dallas, TX	11/06/95	Oil and Gas.
31,670	B&B Shoe Co (Comp)	Paoli, IN	11/15/95	Slippers.
31,671	Boise Cascade (CJA)	LaGrande, OR	11/20/95	Saw Mill—Pine & Fir.
31,672	CMC Apparel (Comp)	Evergreen, AL	11/17/95	Sew Bras.
31,673	Central Operating Co. (Wkrs)	New Haven, WV	11/14/95	Electricity.
31,674	Columbia Natural Resource (Comp)	Charleston, WV	11/20/95	Oil and Gas.
31,675	Excel Products (Wkrs)	Clifton, NJ	11/14/95	Soap & Air Freshners.
31,676	Fluor Daniel (NPOSR), Inc (Wkrs)	Casper, WY	11/17/95	Crude Oil.
31,677	HBC Barge Inc. Plant #80 (Wkrs)	Brownsville, PA	11/17/95	River Barges.
31,678	Horowitz/Rae Book Mfg. ()	Fairfield, NJ	10/31/95	Printing & Binding of Books.
31,679	Hydra-Co Enterprises (Wkrs)	Syracuse, NY	10 /95	Electricity.
31,680	Indian Creek Apparel (Wkrs)	Okolona, MS	11/16/95	Men's Pants/Slacks
31,681	Ithaca Industries, Inc (Comp)	Chadbourn, NC	11/16/95	Men's Briefs & T-Shirts
31,682	Ithaca Industries, Inc (Comp)	Robersonville, NC	11/16/95	Men's Briefs & T-Shirts
31,683	Ithaca Industries, Inc (Comp)	Lakeland, GA	10/30/95	Ladies' Panties

APPENDIX—Continued

[Petitions instituted on 12/04/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,684	Lamsteel Corp of America (IUE)	Hartsville, TN	11/13/95	Sewing Machine Tops & Legs & Tables.
31,685	Lee Apparel (UFCW)	St. Joseph, MO	11/13/95	Denim Jeans
31,686	Maxless Technologies (IBEW)	Pontiac, MI	11/13/95	Wood, Steel & Concrete Floor Panels.
31,687	Mead Products ()	Salem OR	11/09/95	Trimmers, Envelope Machines.
31,688	Monarch Tile, Inc (Comp)	Marshall, TX	11/10/95	Glazed Ceramic Wall tiles.
31,689	Panola Mills of Fruit of (Wkrs)	Batesville, MS	11/08/95	Men's & Boys' T-Shirts & Briefs.
31,690	Philips Consumer Elec. (Wkrs)	Greenville, TN	11/10/95	Televisions.
31,691	Rad Woodworking (Wkrs)	Nescopeack, PA	11/13/95	Van Flooring—Table Tops.
31,692	Reatta Tenn-Partners (Wkrs)	Maynardville, TN	11/13/95	Knitted T-Shirts.
31,693	J.T. Ryerson & Son, Inc (Wkrs)	Jersey City, NJ	11/23/95	Steel Service.
31,694	Snyder Oil Corp (Comp)	Fort Worth, TX	11/17/95	Crude Oil, Natural Gas.
31,695	Snyder Oil Corp (Comp)	Denver, CO	11/17/95	Crude Oil, Natural Gas.
31,696	Southern Apparel Co (Comp)	Robersonville, NC	11/18/95	Kids Jeans.
31,697	Superior Pants Co. (Comp)	Athens, GA	11/17/95	Formal & Casual Coats & Pants.
31,698	The Topps Co. (IBT)	Duryea, PA	11/17/95	Gum and Cards.
31,699	The Topps Company (IBT)	Scranton, PA	11/17/95	Ring Pops Candy.
31,700	Wrangler (Wkrs)	Lonoke, AR	11/17/95	Wrangler Jeans.
31,701	Dressing for Two (Comp)	New York, NY	11/10/95	Ladies' Apparel.
31,702	Onan Corporation (Wkrs)	Fridley, MN	11/17/95	Electrical Generators & Switchgears.
31,703	Carter & Mayes (Comp)	Summerville, GA	11/10/95	Shirts.
31,704	Parker & Parsley (Wkrs)	Midland, TX	11/30/95	Oil Drilling.
31,705	Sierra Technologies (Wkrs)	Buffalo, NY	11/22/95	Flight Inspection Systems.
31,706	Covington Needleworks (Comp)	Mt. Olive, MS	11/20/95	Children's Sportswear.
31,707	Americana Art China (Wkrs)	Sebring, OH	11/21/95	Cups, Mugs.
31,708	Northeast Pager Care (Wkrs)	Totowa, NJ	11/22/95	Pagers.

[FR Doc. 95–30598 Filed 12–14–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,368; TA–W–31,369]

Roxanne of New Jersey, Artsan Corporation, Neptune, New Jersey; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Roxanne of New Jersey and Artsan Corporation, Neptune, New Jersey. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–31,368 & TA–W–31,369; Roxanne of New Jersey & Artsan Corporation, Neptune, New Jersey (December 7, 1995)

Signed at Washington, D.C. this 7th day of December, 1995.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30597 Filed 12–14–95; 8:45 am]

BILLING CODE 4510–30–M

IBM Corporation Enterprise Systems Large Scale Computing Systems Division and Its Successors; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Poughkeepsie, New York—TA–W–29,743
Wappingers Falls, New York—TA–W–29,743A
Kingston, New York—TA–W–29,743B
Somers, New York—TA–W–743C
Hopewell, Junction, New York—TA–W–29,743D
White Plains, New York—TA–W–29,743E
and
TA–W–29,743F—Kingston Software Manufacturing Division of Software Solutions, Kingston, New York

On March 23, 1995, the Department of Labor issued a Notice of Revised Determination on Reconsideration, applicable to all workers at IBM Corporation, Poughkeepsie, New York. The notice was published in the Federal Register on April 5, 1995 (60 FR 17371). The certification was subsequently amended to include other locations of the subject firm. The amended notice was published in the Federal Register on June 29, 1995 (60 FR 33850).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that workers of the Kingston Software Manufacturing Division of Software Solutions located in Kingston, New York provided administrative and support services to IBM's Enterprise System. The Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of IBM Corporation, the Enterprise Systems, Large Scale Computing Systems Division, and its successors who are adversely affected by imports.

The amended notice applicable to TA–W–29,743 is hereby issued as follows:

''All workers of Enterprise Systems, Large Scale Computing Systems Division, and its successors, of IBM Corporation located in Poughkeepsie, Wappingers Falls, Kingston, Somers, Hopewell Junction, and White Plains, New York; and workers Kingston Software Manufacturing Division of Software Solutions located in Kingston, New York providing administrative and support services to IBM's Enterprise System who became totally or partially separated from employment on or after March 23, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, on this 5th Day of December 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30596 Filed 12–14–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,669]

ARCO Corporation Dallas, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 4, 1995 in response to a worker petition which was filed November 6, 1995 on behalf of workers at ARCO Corporation, Dallas, Texas (TA–W–31,669).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–29,431). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 4th day of December 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30595 Filed 12–14–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,431]

ARCO Oil and Gas Company, Atlantic Richfield Company, a/k/a ARCO Corporation, Dallas, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 13, 1995, applicable to all workers of ARCO Oil and Gas Company, Atlantic Richfield Company, Dallas, Texas. The notice was published in the Federal Register on May 11, 1994 (59 FR 24483).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some of the workers at Atlantic Richfield had their unemployment insurance (IU) taxes paid to ARCO Corporation. Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of crude oil.

The amended notice applicable to TA–W–29,431 is hereby issued as follows:

''All workers of ARCO Oil and Gas Company, Atlantic Richfield Company, a/k/a ARCO Corporation, Dallas, Texas who became totally or partially separated from employment on or after February 21, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 4th day of December 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–30594 Filed 12–14–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–113]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 62481 Notice Number 95–109, December 6, 1995.

PREVIOUSLY ANNOUNCED DATE OF MEETING: December 13, 1995, 8:30 a.m. to 4:30 p.m. The meeting will be rescheduled.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aeronautics, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4729).

Dated: December 11, 1995.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 95–30603 Filed 12–14–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral and Economic Sciences, Subcommittee on Transformations to Quality Organizations; Notice of Meeting

Name: Advisory Committee for Social, Behavioral and Economic Sciences, Subcommittee on Transformations to Quality Organizations.

Date & Time: January 4, 1996, 9:00 am–12:00 noon.

Place: Boardroom North, Hyatt Regency, Albuquerque, NM.

Type of Meeting: Open.

Contact Person: Marietta Baba, Program Director, Transformations to Quality Organizations, Room 910, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. 703 306–1757 x7210.

Minutes: May be obtained from contact person above.

Meeting Purpose: Review 1995 Status and Discuss Future Directions

Agenda

1. Welcome and Greetings
2. Review Agenda
3. 1995 Status Report
4. Research Presentations
5. Future Direction
6. Next Steps
7. Next Meeting
8. Adjourn

Dated: December 12, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–30573 Filed 12–14–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Materials Research will be holding panel meetings for the purpose of reviewing proposals submitted to the Office of Multidisciplinary Activities in the area of Optical Science and Engineering. In order to review the large volume of proposals, panel meetings will be held on January 4–5, 1996 (10). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:00 a.m. to 5:00 p.m. each day.

Contact Person: Dr. John Weiner, Head, Office of Multidisciplinary Activities, Office of the Assistant Director for Mathematical and Physical Sciences, National Science Foundation, Room 1005, 4201 Wilson-Boulevard, Arlington, VA 22230, (703) 306–1800.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 12, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–30572 Filed 12–14–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Computer and Information Science and Engineering; 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: Advisory Committee for Computer and Information Science and Engineering

Date and Time: January 4–5, 1996; 8:30 am to 5:00 pm

Place: Room 1120, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230

Type of Meeting: Closed

Contact Person: Mr. David A. Staudt, National Science Foundation, Room 1175, Arlington, VA 22230 (703 306–1949).

Purpose of Meeting: To provide advice and recommendations concerning program proposal processing and handling.

Agenda: To review and evaluate program procedures for the Committee of Visitors, NSFNET Program and Collaborative Activities.

Reason for closing: The information being reviewed includes information of a proprietary or confidential nature, including technical information; and financial data. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 12, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–30571 Filed 12–14–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company; Environmental Assessment and Finding of No Significant Impact

The U. S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–71 and DPR–62 issued to the Carolina Power & Light Company (the licensee) for operation of the Brunswick Steam Electric Plant (BSEP), Units 1 and 2, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action is in response to the licensee's application dated June 9, 1995, for exemption from the requirements of 10 CFR 50.71(e)(4) regarding submission of revisions to the Final Safety Analysis Report (FSAR) and design change reports for facility changes made under 10 CFR 50.59 for the BSEP. Under the proposed exemption the licensee would schedule updates to the single, unified FSAR for the two units that comprise BSEP based on the refueling cycle of BSEP Unit 1.

The Need for the Proposed Action

10 CFR 50.71(e)(4) requires licensees to submit updates to their FSAR within 6 months after each refueling outage providing that the interval between successive updates does not exceed 24 months. Since BSEP Units 1 and 2 share a common FSAR, the licensee must update the same document within 6 months after a refueling outage for either unit. Allowing the exemption would maintain the BSEP FSAR current within 24 months of the last revision and would not exceed a 24-month interval for submission of the 10 CFR 50.59 design change report for either unit.

Environmental Impacts of the Proposed Action

No changes are being made in the types or amounts of any radiological effluent that may be released off site. There is no significant increase in the allowable individual or cumulative occupational radiation exposure. The Commission concludes that granting the proposed exemption would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed exemption does not affect non-radiological plant effluents and has no other environmental impact. The Commission concludes that there are no significant non-radiological impacts associated with the proposed exemption.

Alternative to the Proposed Action

Because the staff has concluded that there is no significant environmental impact associated with the proposed exemption, any alternative to the exemption will have either no significantly different environmental impact, or greater environmental impact.

The principal alternative would be to deny the requested exemption. Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed exemption and this alternative are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statement related to Brunswick Steam Electric Plant, dated January 1974.

Agencies and Persons Contacted

In accordance with its stated policy, on December 5, 1995, the staff consulted with the North Carolina State official, Mr. J. James of the Division of Radiation Protection, North Carolina Department of Environmental, Commerce and Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's request for the exemption dated June 9, 1995, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington DC, and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina, 28403.

Dated at Rockville, Maryland this 8th day of December 1995.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–1, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–30583 Filed 12–14–95; 8:45 am]

BILLING CODE 7590–01–P

NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued two final reports on estimating pressurized water reactor (PWR) decommissioning costs. They are NUREG/CR–5884, ''Revised Analyses of the Decommissioning for the Reference Pressurized Water Reactor Power Station,'' and NUREG/CR–6054, ''Estimating Pressurized Water Reactor Decommissioning Costs.'' The reports discuss and provide methods for estimating decommissioning costs for PWRs. They also provide background information to support rulemaking activities to modify funding assurance requirements for power reactor licensees. Companion reports addressing boiling water reactor decommissioning costs will be published in the near future.

Copies of NUREG/CR–5884 and NUREG/CR–6054 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P. O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield,

Virginia 22161. Copies are available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

For further information contact George J. Mencinsky, Division of Regulatory Applications, Office of Nuclear Regulatory Research, Mail Stop T–9 F31, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6206.

Dated at Rockville, Maryland, this 7th day of December, 1995. For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 95–30584 Filed 12–14–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on November 1, 1995 (60 FR 55613). Individual authorities established or revoked under Schedules A and B and established under Schedule C between October 1, 1995, and October 31, 1995, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established in October 1995.

The following exception was revoked:

Department of Treasury

U.S. Customs Service, positions of part-time, intermittent, mixed tour, or seasonal Customs Inspectors, Port Directors, Inspectional Aides, Clerks and Cashiers at remote/isolated locations where examination is impracticable. An individual appointed under this authority may not be employed in the Customs Service under a combination of this and any other appointment for more than 1,040 working hours in a service year. Effective October 11, 1995.

Schedule B

No Schedule B authorities were established or revoked in October 1995.

Schedule C

The following Schedule C authorities were established in October 1995.

Commission on Civil Rights

Special Assistant to the Staff Director. Effective October 11, 1995.

Department of Agriculture

Confidential Assistant to the Chief, Natural Resources Conservation Service. Effective October 13, 1995.

Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective October 17, 1995.

Department of Commerce

Confidential Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective October 12, 1995.

Deputy Director to the Director, White House Liaison. Effective October 23, 1995.

Special Assistant to the Director, Minority Business Development Agency. Effective October 26, 1995.

Special Assistant to the General Counsel. Effective October 30, 1995.

Special Assistant to the Deputy Assistant Secretary for U.S. and Foreign Commercial Service. Effective October 31, 1995.

Department of Defense

Defense Fellow to the Deputy Assistant Secretary of Defense, African Affairs. Effective October 16, 1995.

Associate Director, Communications to the Senior Director, Communications, National Security Council. Effective October 19, 1995.

Foreign Affairs Specialist to the Deputy Assistant Secretary of Defense (Peacekeeping and Peace Enforcement). Effective October 25, 1995.

Department of Education

Executive Assistant to the Assistant Secretary, Office of Vocational and Adult Education. Effective October 10, 1995.

Special Assistant to the Director, Office of Public Affairs. Effective October 13, 1995.

Confidential Assistant to the Secretary's Regional Representative, Region IX. Effective October 23, 1995.

Department of Energy

Special Assistant to the Assistant Secretary for Policy. Effective October 10, 1995.

Staff Assistant to the Chief Financial Officer. Effective October 10, 1995.

Department of Health and Human Services

Confidential Assistant to the Assistant Secretary for Public Affairs. Effective October 10, 1995.

Strategic Planning and Policy Coordinator to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy). Effective October 19, 1995.

Department of Housing and Urban Development

Special Assistant to the Secretary of Housing and Urban Development. Effective October 31, 1995.

Department of the Interior

Special Assistant to the Secretary of Interior. Effective October 5, 1995.

Department of Labor

Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 17, 1995.

Department of State

Legislative Management Officer to the Assistant Secretary, Legislative Affairs. Effective October 16, 1995.

Special Assistant to the Director of the Policy Planning Staff. Effective October 19, 1995.

Department of Transportation

Special Assistant to the Secretary of Transportation. Effective October 3, 1995.

Department of the Treasury

Assistant Director, Travel and Special Events Services to the Director, Administrative Operations Division. Effective October 17, 1995.

Environmental Protection Agency

Senior Policy Advisor to the Director, Common Sense Initiative Program Staff. Effective October 31, 1995.

Federal Maritime Commission

Counsel to the Chairman, Federal Maritime Commission. Effective October 24, 1995.

Federal Mine Safety and Health Review Commission

Confidential Assistant to the Chairman. Effective October 10, 1995.

General Services Administration

Congressional Liaison Officer to the Associate Administrator for

Congressional and Intergovernmental Affairs. Effective October 31, 1995.

National Mediation Board

Confidential Assistant to a Board Member. Effective October 31, 1995.

Office of National Drug Control Policy

Director, Communications Planning to the Director, Office of National Drug Control Policy. Effective October 19, 1995.

Small Business Administration

Deputy Assistant Administrator for Congressional and Legislative Affairs to the Assistant Administrator for Congressional and Legislative Affairs. Effective October 31, 1995.

Press Secretary and Special Assistant to the Assistant Administrator for Communications. Effective October 31, 1995.

United States Tax Court

Secretary (Confidential Assistant) to the Judge. Effective October 11, 1995.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218

Office of Personnel Management

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–30605 Filed 12–14–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–21588; 812–9632]

Wellington Underwriting plc; Notice of Application

December 8, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''Act'').

APPLICANT: Wellington Underwriting plc.

RELEVANT ACT SECTION: Exemption requested under Section 6(c).

SUMMARY OF APPLICATION: Applicant, a United Kingdom company engaged in the business of insurance, seeks an order granting it a conditional exemption from all provisions of the Act. Because of its listing on the London Stock Exchange as an ''investment company,'' Applicant seeks to clarify its status prior to a proposed offer and sale of its American Depositary Shares in the United States to assure that it will not be required to register as an investment company under the Act.

FILING DATES: The application was filed on June 16, 1995, and amended on October 17, 1995. Counsel for Applicant has agreed to file a further amendment during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 2, 1996, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 2 Minster Court, Mincing Lane, London, EC3R 7FB, England.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a public holding company incorporated under the laws of England and Wales, was formed for the purpose of allowing investors to participate with limited liability in underwriting insurance risks at Lloyd's of London (''Lloyd's''). Applicant underwrites at Lloyd's through five wholly-owned subsidiaries (the ''Subsidiaries''). The Subsidiaries have received approval from Lloyd's as ''Corporate Members,'' *i.e.*, corporations acting as insurance underwriters through syndicates at Lloyd's. The only securities which the Applicant will own are those of the Subsidiaries.

2. On November 23, 1994, Applicant completed a placement of 17,250,000 Ordinary Shares. This included a private placement in the United States of 127,094 American Depository Shares (representing 1,270,940 Ordinary Shares) to eleven ''accredited investors'' within the meaning of Regulation D under the Securities Act of 1933 (the ''1933 Act''). The balance of Applicant's Ordinary Shares were placed with 76 holders outside the United States.

3. Applicant's shares are traded on the London Stock Exchange (''LSE''), where Applicant is listed as an ''investment company.'' To be listed on the LSE, an issuer must have three years of audited financial statements unless it lists as an ''investment company.'' [1] Applicant sought to be listed under this category in order to facilitate an immediate listing on the LSE which otherwise would not have been possible for a new issuer. Applicant is not otherwise treated as an investment company in the United Kingdom.

4. The Subsidiaries commenced operations on January 1, 1995, engaging exclusively in the insurance business of acting as Corporate Members of syndicates underwriting insurance at Lloyd's. The Subsidiaries underwrite insurance at Lloyd's through syndicates managed by Wellington Underwriting Agencies Limited, a wholly-owned subsidiary of Wellington Underwriting Holdings Limited. Pursuant to the LSE Listing Rules and the rules of the Council of Lloyd's (the ''Council''), the central body that regulates the affairs of the Lloyd's market, the Subsidiaries will not transact any other business.

5. The Subsidiaries are regulated in the U.K. as insurance companies, not investment companies. Because they are Corporate Members of Lloyd's, the Subsidiaries must comply with various provisions of the U.K. Insurance Companies Act 1982 and are subject to oversight by the Secretary of State for Trade and Industry. Most notably, U.K. regulation focuses on solvency, the fundamental principle of insurance regulation, by requiring audited statements and actuarial certificates for Members' accounts, trust funds for premiums, and margins of solvency. The British Department of Trade and Industry also has significant powers to regulate the market and affairs of Members in the event that either Lloyd's underwriters taken as a whole or any Member fails to satisfy regulatory requirements. These powers include, among others, the ability to regulate the investment and custody of assets at Lloyd's, to limit (or terminate) the writing of insurance, and to direct the actions of the Council or other persons at Lloyd's.

[1] To qualify as an ''investment company'' under LSE rules, no more than 20% of the Applicant's assets on a consolidated basis may be invested in the securities of any one company—including its own subsidiaries, and the Applicant must be a passive investor and not control the companies in which it invests, other than companies through which it invests (*i.e.*, the Subsidiaries).

6. At the present time, the Applicant's shares are beneficially owned by fewer than one hundred persons in the United States, and the Applicant is not making, and does not presently propose to make, a public offering of its securities in the United States. The Applicant intends, however, to raise additional capital, which may include another offering of American Depository Shares to additional United States investors through a further private placement.

Applicant's Legal Analysis

1. Section 3(a)(1) defines ''investment company'' to mean, as here relevant, any issuer that holds itself out as being engaged primarily in the business of investing or trading in securities. Because the Applicant is listed on the LSE as an ''investment company,'' it arguably has held itself out as an investment company within the meaning of section 3(a)(1).[2]

2. Applicant requests an exemption from all provisions of the Act pursuant to section 6(c). Section 6(c) provides, as here relevant, that the SEC, by order upon application, may exempt any person from any provisions of the Act or of any rule thereunder, if and to the extent that such exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicant submits that the requested relief meets the exemptive standards established by section 6(c). It asserts primarily that it is engaged through the Subsidiaries in the business of an insurance company, and does not operate as an investment company for purposes of the Act. In this regard, even though the Applicant's memorandum of association gives it the power to carry on the business of both an investment company and an insurance business, it is not treated as an investment company under the U.K. Companies Act or as an investment trust for tax purposes. Similarly, the Applicant is not treated as a collective investment scheme or an authorized unit trust scheme under the U.K. Financial Services Act or as an undertaking for collective investment in transferable securities (''UCITS'') under directives of the European Union. In addition, the daily trading price of the Applicant's shares on the LSE is quoted in the Financial Times under the caption ''Insurance'' and not ''Investment Trusts.'' While the 1994 prospectus for the Applicant's shares introduced it as an investment company, the stated purpose of the offering was to enable investors to underwrite insurance with limited liability through Lloyd's syndicates managed by Wellington Underwriting Agencies Limited. Based on the foregoing, Applicant argues that the Act's purpose would not be served by applying it to the Applicant merely because it is listed, for reasons of convenience, as an investment company on the LSE.

4. Applicant also submits that exemptive relief would be consistent with the purposes intended by specific policies and provisions of the Act. Section 3(c)(3) of the Act excludes from the definition of ''investment company'' domestic insurance companies. Rule 3a–6 provides that foreign insurance companies are also not subject to the provisions of the Act. Applicant represents that its Subsidiaries fall within the requirements of rule 3a–6.[3] Applicant notes that United States holding companies for insurance companies are excepted from the definition of investment company by section 3(c)(6). Because of its status as a holding company whose only operations are the ownership of the Subsidiaries, the Applicant is a foreign insurance company holding company. The SEC, upon adopting rule 3a–6, made it clear that foreign insurance company holding companies should be treated under the Act on the same basis as United States insurance company holding companies.[4]

Applicant's Conditions

Applicant agrees that any order of the SEC granting the exemptive relief requested by the application may be made subject to the following conditions:

1. No Subsidiary will be an ''investment company'' as defined by the Act.

2. Applicant will continue to operate, either directly or indirectly, only in the business of insurance.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30527 Filed 12–14–95; 8:45 am]

BILLING CODE 8010–01–M

[2] The Applicant's assets consist entirely of securities of the wholly-owned Subsidiaries, which in turn hold assets in the form of a Lloyd's deposit that is invested in securities. Thus, the Subsidiaries, and consequently the Applicant itself, would be deemed investment companies under section 3(a)(3), except for, as discussed below, the Subsidiaries' status as foreign insurance companies under rule 3a–6.

[3] Rule 3a–6 defines ''foreign insurance company'' as an insurance company organized under the laws of another country that is regulated as such by that country's government, that is engaged predominantly in writing or reinsuring insurance agreements of the type specified in section 3(a)(8) of the 1933 Act, and that is not operated for purposes of evading the provisions of the Act. Applicant intends to rely on an opinion of counsel to the effect that its Subsidiaries are exempt from registration under the Act because they are foreign insurance companies within the meaning of the rule. Applicant does not request SEC review or approval of counsel's opinion, and acknowledges that the SEC takes no position as to its availability.

[4] See Investment Company Act Release No. 18381 (Oct. 29, 1991).

[Release No. 35–26427]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

December 8, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 2, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company (70–8733)

The Southern Company (''Southern''), 270 Peachtree Street, N.W., Atlanta, Georgia 30346, a registered holding company, and its subsidiaries, Mobile Energy Services Holdings, Inc. (''Mobile Energy''), Southern Electric International, Inc. (''Southern Electric''), SEI Holdings, Inc. (''Holdings''), Southern Electric Wholesale Generators, Inc. (''Domestic Holdings''), and SEI

Europe, Inc. (''Foreign Holdings''), each of 900 Ashwood Parkway, Atlanta, Georgia 30338, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(f), 13, 32 and 33 of the Act and rules 43, 45, 53, and 54 thereunder.

Consolidation of Ownership of Exempt Projects

Southern proposes to consolidate all of its direct and indirect ownership interests in all exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs'', and, together with EWGs, ''Exempt Projects'') (each as defined in the Act), various intermediate subsidiaries through which it holds investments in EWGs and FUCOs (''Project Parents''), and activities and functions related to these projects, under one of its subsidiaries, Holdings.[1]

Pursuant to the Orders and preliminary to the proposed reorganization, Southern organized and contributed to Holdings all of the outstanding stock of Domestic Holdings, an EWG that holds Southern's ownership interests in other domestic EWGs, and of Foreign Holdings, a Project Parent that holds Southern's interest in a FUCO in England. Southern will then contribute to Foreign Holdings its interests in other existing FUCOs, foreign EWGs, and Project Parents.

In this proceeding, Southern proposes to take the following additional steps to effect the proposed reorganization: (1) Southern will contribute to Holdings the common stock of Southern Electric [2], and Southern Electric will become a subsidiary of Holdings; (2) Southern Electric will sell to Foreign Holdings or its subsidiaries the securities of Southern Electric International-Asia, Inc., and Southern Electric international GmbH, two Southern electric subsidiaries that conduct preliminary project development activities in foreign countries[3]; (3) Southern Electric will transfer to Foreign Holdings all of the common stock of SEI Operadora de Argentina S.A., a FUCO[4]; and (4) Mobile Energy will create a new class of nonvoting preferred stock and distribute all outstanding shares of such stock to Southern; Southern will transfer such stock to Holdings, which, in turn, will transfer such stock to Domestic Holdings, as a capital contribution.[5]

After the reorganization, Southern expects that future investments in power projects will be made through Holdings and its subsidiaries, and that Holdings and its subsidiaries will conduct all other related project activities. Holdings will use available funds, including the proceeds of financing by Southern and third-party borrowings that are guaranteed by Southern[6], together with internally generated funds and proceeds of securities sold to third parties, to make these investments and to finance the costs of other authorized and permitted activities.

Acquisition of Energy-Related Companies

Holdings also requests authority to acquire, directly or indirectly through subsidiaries, in one or more transactions from time to time through December 31, 2000, the securities of or other interests in one or more companies that derive or will derive substantially all of their revenues from the ownership and/or operation of one or more of the following categories of energy-related businesses: (a) ''Qualifying facilities'', as defined under the Public Utility Regulatory Policies Act of 1978, as amended, and ownership and operation of incidental facilities; (b) production, conversion and distribution of thermal energy products; (c) brokering and marketing of energy commodities; and (d) other energy-related businesses to the extent that acquisition of interests in such businesses are exempt under a rule subsequently adopted by the Commission.[7]

Formation of New Subsidiaries

Holdings, Domestic Holdings and Foreign Holdings propose to organize one or more intermediate subsidiaries to make investments in Exempt Projects, other power projects, and energy-related companies and to provide project development and management services to projects and companies held by them (''Intermediate Subsidiaries''), and to organize one or more special purpose subsidiaries to engage in any of the activities in which Southern Electric is currently authorized to engage (''Special Purpose Subsidiaries'').[8]

Financial Guaranties

Southern has existing authorization with respect to guaranties of subsidiary obligations.[9] Southern now requests an order that would supersede this guaranty authorization. Southern proposes to guaranty the securities of Holdings or any of its direct or indirect subsidiaries, from time to time through December 31, 2000, in an aggregate principal amount at any one time outstanding of not more than $1.2 billion, provided that the aggregate outstanding principal amount of such guaranties, when added to Southern's ''aggregate investment'', as defined in rule 53(a), in all Exempt Projects, shall not exceed 50% of Southern's ''consolidated retained earnings,'' as so defined.[10]

Holdings, Domestic Holdings, Foreign Holdings and any Intermediate Subsidiary also propose to guaranty the securities issued by any of their direct or indirect subsidiaries (provided that the issue and sale of such securities are

[1] The authorization of the transactions proposed in this file would supercede Southern's current authorization to organize Project Parents to hold investments in EWGs and FUCOs. Holding Co. Act Release Nos. 26096 (Aug. 3, 1994) and 26338 (July 25, 1995) (''Orders'').

[2] Southern Electric engages in preliminary project development activities and the sale of operating, construction, project management, administrative and other services to associates and nonassociates, pursuant to Holding Co. Act Release No. 26212 (Dec. 30, 1994) (''December 1994 Order''). After the proposed reorganization, Southern Electric would continue to engage in these activities, and any additional investment in Southern Electric would be made indirectly through Holdings.

[3] The sales price for the shares will equal Southern Electric's investment in the two companies, which currently is less than $50,000 in the aggregate.

[4] Southern Electric will distribute the stock of this subsidiary to Holdings, and Holdings will concurrently transfer the stock to Foreign Holdings

[5] The purpose of these transactions is to direct some or all of the cash flow and income from Mobile Energy to support the operations and future financing by Holdings and Domestic Holdings. Mobile Energy holds a 99% interest in Mobile Energy Services Company, L.L.C., an Alabama limited liability company that owns a cogeneration complex in Mobile.

[6] The applicants state that Southern will make additional investments in Holdings from time to time, to finance the business of Holdings and its subsidiaries, pursuant to the exemptions in rules 52 and 45(b)(4), provided that (a) any additional investment in Holdings to enable Holdings to acquire directly or indirectly an interest in an Exempt Project will be subject to the limitations of rule 53 and any other applicable rules, and (b) the aggregate amount of financing provided to Holdings by Southern that will be invested directly or indirectly in energy-related companies will not exceed $300 million or such greater amount as may be permitted under a rule subsequently adopted by the Commission.

[7] The Commission has proposed a rule that would exempt from the requirement of prior Commission approval under the Act acquisitions of securities of companies that derive all or substantially all of their revenues from specified activities closely related to the core utility business of a registered holding company system. See Holding Co. Act Release No. 26313 (June 20, 1995), 60 FR 33642 (June 28, 1995).

[8] The activities of such special purpose subsidiaries would be subject to all terms, conditions and limitations in the December 1994 Order that are applicable to Southern Electric.

[9] Holding Co. Act Release No. 26349 (Aug. 3, 1995), authorizing guaranties of the securities of Exempt Projects from time to time through December 31, 1999, in an aggregate amount at any one time outstanding not to exceed $1.2 billion, subject to certain conditions and limitations.

[10] In a separate proceeding in File No. 70–8725, Southern has requested authorization to increase this limit to 100% of its ''consolidated retained earnings''. The issuance of an order in that filing would amend Southern's guaranty authority as in effect at the date of issuance of such order.

exempt from the requirement of prior Commission approval under section 6(a) of the Act), from time to time through December 31, 2000, in an aggregate amount not to exceed $1.2 billion at any one time outstanding.

Guaranties may take the form of direct guaranties, standby equity funding commitments, obligations under capital maintenance agreements or reimbursement agreements in respect of bank letters of credit, or other similar financial instruments or undertakings.

Pledge of Securities

Southern proposes to pledge the shares of Holdings, and Holdings, Domestic Holdings, Foreign Holdings and any Intermediate Subsidiary propose to pledge the shares of their respective subsidiaries, as security in connection with the sale of debt securities by Holdings and such subsidiaries.

Performance Guaranties

Southern is currently authorized by the December 1994 Order to guaranty performance by or act as indemnitor or surety with respect to contractual obligations of Southern Electric, any subsidiary of Southern Electric or any project entity in which Southern directly or indirectly holds an interest, in an aggregate amount not to exceed $800 million at any one time outstanding through December 31, 2003 [11]. Southern requests that this authorization be modified so that it may provide such performance guaranties on behalf of Holdings and any direct or indirect subsidiary of Holdings, including Southern Electric, any Exempt Project, other power project, energy-related company or Intermediate Subsidiary.

Holdings, Domestic Holdings, Foreign Holdings and any Intermediate Subsidiary also propose to provide performance guaranties on behalf of any of their direct and indirect subsidiaries. The amount of these guaranties will be included in calculating the above maximum amount of performance guaranties provided by Southern only if they are supported by an agreement or undertaking of Southern.

Services and Goods

The applicants propose that Special Purpose Subsidiaries of Holdings, Domestic Holdings or Foreign Holdings may render services or sell goods to associate companies. Such services will be rendered and goods will be sold at cost, in compliance with the Act and the rules thereunder, unless the Special Purpose Subsidiary complies with the conditions specified in the December 1994 Order with respect to Southern Electric, in which case services or goods may be sold at market prices.

Reporting

The applicants propose that a single consolidated quarterly report be filed by Southern and Holdings pursuant to rule 24 with respect to all activities of Holdings and its subsidiaries authorized in this file. This report would replace the combined report currently being filed pursuant to the December 1994 Order and the Orders with respect to the activities of Southern Electric and the Project Parents.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30528 Filed 12–14–95; 8:45 am]

BILLING CODE 8010–01–M

[11] The aggregate amount of such guarantees and indemnification of sureties is reduced by similar undertakings made or incurred by Southern in connection with activities of certain other subsidiaries.

[Investment Company Act Release No. 21590; 812–9534]

Managed Accounts Services Portfolio Trust and Mitchell Hutchins Asset Management Inc.; Notice of Application

December 11, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Managed Accounts Services Portfolio Trust (the ''Trust'') and Mitchell Hutchins Asset Management Inc. (''Mitchell Hutchins'').

RELEVANT ACT SECTIONS: Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f–2 thereunder.

SUMMARY OF APPLICATION: The Trust is a registered investment company advised by Mitchell Hutchins. Mitchell Hutchins oversees the selection of other investment advisers for the Trust's series, monitors such investment advisers, and allocates assets among them. The order would permit an investment adviser other than Mitchell Hutchins to serve as an investment adviser to one or more series of the Trust without receiving prior shareholder approval.

FILING DATE: The application was filed on March 16, 1995, and amended on August 9, and December 8, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 5, 1996, and should be accompanied by proof of service on applicants, in the form of an addidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, 1285 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574 or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a registered open-end management investment company organized as a Delaware business trust. The Trust is currently composed of twelve separate investment portfolios (each a ''Portfolio,'' and collectively, the ''Portfolios''). The Trust was organized by Mitchell Hutchins and its parent, PaineWebber Incorproated (''PaineWebber''), to provide to participants in the PaineWebber PACE Program (the ''PACE Program'') a cost-effective investment method (i.e., a series of pooled investment funds) to invest their assets in a variety of different asset classes managed by investment advisers selected and monitored by Mitchell Hutchins.

2. Mitchell Hutchins, a Delaware corporation that is registered as an investment adviser, acts as the investment manager and administrator to the Trust pursuant to an Investment Management and Administration Agreement with the Trust (the ''Management Agreement'') and is responsible for the selection or termination of investment advisers (''Sub-Advisers'') for each of the Portfolios. Mitchell Hutchins also serves as the adviser to the PACE Money Market Investment Portfolio, one of the

Trust's Portfolios. None of the Sub-Advisers has any affiliation with Mitchell Hutchins or PaineWebber. Each Portfolio will pay Mitchell Hutchins a management fee for investment management services provided to the Trust, and an administrative fee for administrative services provided to each Portfolio. Mitchell Hutchins compensates each Sub-Adviser from the management fees that it receives from the applicable Portfolio.

3. The purchase of shares of the Trust by a PACE Program participant must be made through a brokerage account maintained with PaineWebber.[1] As described in the Trust's prospectus and marketing materials, under the PACE Program, PaineWebber Managed Accounts Services (''PMAS''), a division of PaineWebber, will provide participants with asset allocation recommendations and related services with respect to their investments in the Portfolios for a fee, which will be charged directly to the participant's brokerage account. These recommendations are based on an evaluation of each participant's identified investment objectives and risk tolerances. PMAS will provide each participant with written recommendations appropriate to that participant, but the participant is under no obligation to act on the recommendations, and PMAS will not have investment discretion over the participant's account. Participants in the PACE Program are expected to include individuals, institutional investors, individual retirement accounts and qualified employee benefit plans.

4. An important element of the PACE Program, as disclosed in the Trust's prospectus[2] and emphasized in the PACE Program marketing materials, is the use of a significant number of different Sub-Advisers evaluated, selected and monitored by Mitchell Hutchins. This structure is often referred to as a ''multi-manager fund.'' An explanatory supplemental sales literature brochure titled ''Investment Manager Profiles'' provided to each PACE Program participant describes the Sub-Adviser selection process and the Sub-Advisers employed currently by the Trust.

5. Initially, each Portfolio, with the exception of the PACE Money Market Investments Portfolio which will be advised by Mitchell Hutchins, will have one Sub-Adviser. Mitchell Hutchins anticipates that it may recommend the use of two or more Sub-Advisers for some, and perhaps most, Portfolios as assets of the Portfolios increase and it becomes cost-effective to allocate a Portfolio's assets among several Sub-Advisers. Each Sub-Adviser would pursue a distinct but complementary investment process.

6. Under the Management Agreement, Mitchell Hutchins manages the investment operations of the Trust, administers the Trust's affairs, and, except as provided below, makes recommendations for each Portfolio to the Board of Trustees of the Trust regarding (a) the investment strategies and policies of each Portfolio and (b) the selection and retention of Sub-Advisers who will exercise investment discretion with respect to the assets of each Portfolio. Mitchell Hutchins' services do not include recommendations regarding the purchase of individual securities, but consist of professional advice as to the Sub-Advisers that are most likely, over time, to achieve the investment objectives of the Portfolios.

7. Mitchell Hutchins provides investment advisory services for the PACE Money Market Investments Portfolio, although the Trust reserves the right to hire another Sub-Adviser to provide investment advisory services to the PACE Money Market Investments Portfolio if Mitchell Hutchins recommends, and the Board of Trustees approves, such action.

8. Applicants request an exemption from section 15(a) and rule 18f–2 to permit a Sub-Adviser to serve as an investment adviser to one or more Portfolios under a written contract that has not been approved by a vote of the majority of the outstanding voting securities of the Portfolios, including a contract that has terminated as a result of its ''assignment.'' Although shareholders will not vote on Sub-Adviser changes, applicants will provide shareholders with all the information that would be included in a proxy statement within 90 days of the hiring of any new Sub-Adviser or the implementation of any proposed material change in a Sub-Adviser contract.

9. The Trust will rely on Mitchell Hutchins to monitor the performance of each Sub-Adviser employed by the Trust, as well as other attributes that could affect a Sub-Adviser's future performance. Applicants believe that it is in the best interest of the Trust's shareholders for the Trust's Trustees to be able to respond promptly to Mitchell Hutchins' recommendations by negotiating changes in Sub-Advisers' contracts or, if necessary, by adding one or more new Sub-Advisers.

Applicants' Legal Conclusions

1. Section 15(a) makes it unlawful for any person to act as investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. The Trust holds itself out as a multi-manager fund whereby investors obtain Mitchell Hutchins' services as a professional organization that will evaluate and determine which Sub-Advisers are most likely to make portfolio securities selections that will achieve the investor's defined objectives. Applicants believe that investors choosing to invest in the Trust have determined that they are unable or unwilling to select and/or monitor) effectively the best Sub-Advisers for a Portfolio and, therefore, desire that a professional organization with substantial experience and resources conduct these services on their behalf. Under the Trust's structure, applicants assert that the selection or change in a Sub-Adviser is not an event that significantly alters the nature of the shareholder's investment and thus does not implicate the policy concerns requiring shareholder approval.

3. Applicants assert that, unlike the conventional investment company, the structure of the Trust provides complete independence from the Sub-Advisers. By contracting with Mitchell Hutchins for corporate management and distribution functions, the Trust provides investors with the full services of a conventional investment company, but also retains complete freedom to select or change investment advisers. Applicants believe that there are no compelling policy reasons that require the Trust, any more than shareholders of the conventional investment company should approve its adviser's change of a portfolio manager or revision of that portfolio manager's employment contract.

4. Applicants assert that the Trust's investors will be able to exercise control over their relationship with Mitchell

[1] Shares of the Portfolios may also be available at some future date for purchase through other asset allocation programs offered by professional asset managers (e.g. banks, trust companies, or registered investment advisers) who, for compensation, engage in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities.

[2] The Trust's prospectus has also disclosed, since the effective date of the Trust's registration statement on June 21, 1995, that the Trust was seeking an exemptive order from the SEC exempting it from the requirement that each agreement between the Trust and a Sub-Adviser be approved by a vote of a majority of the shareholders of the affected Portfolio.

Hutchins, the party the investors have chosen to hold accountable for investment results, through the voting rights pursuant to section 15(a) of the Act and rule 18f–2 thereunder concerning the Trust's Management Agreement with Mitchell Hutchins. Applicants believe that a shareholder vote concerning a Sub-Advisory Agreement prior to its effective date should not be required, particularly when doing so will (i) increase the Trust's expenses and (ii) may delay prompt implementation of the action Mitchell Hutchins (and ultimately the investors themselves) has determined is most beneficial to the Trust's shareholders. Therefore, applicants contend that requiring the Trust to obtain immediate and costly shareholder approval for every change in control of a Sub-Adviser is unreasonably burdensome, particularly where shareholders have chosen Mitchell Hutchins to determine the impact of the proposed change on their behalf.

5. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the policies and purposes fairly intended by the policies and provisions of the Act. Applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree that the requested exemption is subject to the following conditions:

1. Mitchell Hutchins will not enter into a Sub-Advisory Agreement with any Sub-Adviser that is an affiliated person (as defined in section 2(a)(3) of the Act) of the Trust or Mitchell Hutchins other than by reason of serving as a Sub-Adviser to one or more of the Portfolios (an ''Affiliated Sub-Adviser'') without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

2. At all times, a majority of the Trustees of the Trust will be persons each of whom is not an ''interested person'' of the Trust (as defined in section 2(a)(19) of the Act) (the ''Independent Trustees''), and the nomination of new or additional Independent Trustees will be placed with the discretion of the then existing Independent Trustees.

3. When a Sub-Adviser change is proposed for a Portfolio with an Affiliated Sub-Adviser, the Trustee of the Trust, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's board minutes, that the change is in the best interests of the Portfolio and its shareholders and does not involve a conflict of interest from which Mitchell Hutchins or the Affiliated Sub-Adviser derives an inappropriate advantage.

4. Mitchell Hutchins will provide general management and administrative services to the Trust, and, subject to review and approval by the Trust's Trustees, will: (a) Set the Portfolios' overall investment strategies; (b) select Sub-Advisers; (c) allocate and, when appropriate, reallocate the Portfolios' assets among Sub-Advisers; (d) monitor and evaluate the performance of Sub-Advisers; and (e) ensure that the Sub-Advisers comply with the Trust's investment objectives, policies, and restrictions.

5. Before a future Portfolio that does not presently have an effective registration statement may rely on the order, its initial shareholder will approve the multi-manager structure before Portfolio shares are offered to the public.

6. Within 90 days of the hiring of any new Sub-Adviser or the implementation of any proposed material change in a Sub-Advisory Agreement, the Trust will furnish shareholders all information about a new Sub-Adviser or Sub-Advisory Agreement that would be included in a proxy statement. Such information will include any change in such disclosure caused by the addition of a new Sub-Adviser or any proposed material change in a Portfolio's Sub-Advisory Agreement. The Trust will meet this condition by providing shareholders, within 90 days of the hiring of a Sub-Adviser or the implementation of any material change to the terms of a Sub-Advisory Agreement, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 (the ''Exchange Act''). The information statement also will meet the requirements of Schedule 14A under the Exchange Act.

7. No Trustee or officer of the Trust or Mitchell Hutchins will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such Trustee or officer) any interest in a Sub-Adviser except for: (a) ownership of interests in Mitchell Hutchins or any entity that controls, is controlled by, or is under common control with Mitchell Hutchins; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

8. The Trust will disclose in all prospectuses relating to any Portfolio the existence, substance, and effect of any order granted pursuant to the application.

9. Shares of the Trust will be offered exclusively to participants in the PACE Program or other asset allocation services offered by professional asset managers who, for compensation, engage in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30569 Filed 12–14–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36567; File No. SR-Amex–95–35]

Self-Regulatory Organizations; Order Granting Partial Approval to a Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Members' Compliance With Position and Exercise Limits for Non-Amex Listed Options

December 8, 1995.

On August 25, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend (1) Amex Rule 900(a), ''Applicability,'' to confirm the Exchange's enforcement authority over Amex members' options transactions effected on another options exchange; and (2) Amex Rules 904, ''Position Limits,'' and 905, ''Exercise Limits,'' to require Amex members who trade non-Amex listed option contracts and who are not members of the exchange where the options are traded to comply with the option position and exercise limits set by the exchange where the transactions are effected.[3] The Amex

[1] 15 U.S.C. 78s(b)(1(1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors

Continued

subsequently filed Amendment No. 1 to the proposal.[4]

Notice of the proposed rule change and Amendment No. 1 were published for comment and appeared in the Federal Register on October 20, 1995.[5] No comments were received on the proposal. This order grants partial approval of the portion of the proposal amending Amex Rules 904 and 905.[6]

Currently, Amex Rule 904 prohibits Amex members from effecting, for any account in which the member has an interest or for any customer account, transactions in option contracts dealt in on the Exchange that would exceed the Amex's established position limits. Similarly, Amex Rule 905 prohibits members from exercising, for any account in which the member has an interest or for any customer account, a long position in option contracts dealt in on the Exchange that would exceed the Amex's established exercise limits. As presently written, Amex Rules 904 and 905 apply only to option classes traded on the Amex and not to opening transactions or exercises in option classes traded on another options exchange. Since each options exchange has jurisdiction only over its own members, a jurisdictional loophole exists where, for example, an Amex member exceeds position or exercise limits on another options exchange of which it is not a member in an option class not listed on the Amex. Under those circumstances, the Amex could not take disciplinary action against its member for violating the position and exercise limit rules in an option class traded on another options exchange. Similarly, the options exchange where the option class is traded could not bring an action since it does not have jurisdiction over a non-member.

In order to close this jurisdictional loophole, the Amex proposes to extend its disciplinary jurisdiction to include members' violations of the position and exercise limits of other options exchanges. Specifically, the Amex proposes to amend Amex Rule 904 to prohibit Amex members who are not members of the exchange where the options transactions are effected from effecting, for any account in which the Amex member has an interest or for any customer account, transactions in option contracts that would exceed the position limits established by the exchange where the options are traded. Similarly, the Amex proposes to amend Exchange Rule 905 to prohibit Amex members who are not members of the exchange where the options transactions are effected from exercising, for any account in which the Amex member has an interest or for any customer account, a long position in option contracts that would exceed the exercise limits established by the exchange where the options are traded.

The Amex notes that the proposed extension of jurisdiction will apply only when the Amex member is not a member of the other options exchange. In addition, the Amex will apply the applicable position and exercise limit rules of the other exchange, as well as its interpretations and policies.[7].

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), 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 and a national market system.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 (b) (5)[8] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Specifically, the Amex has noted that Exchange Rules 904 and 905 currently apply solely to option contracts dealt in on the Amex and do not prohibit Amex members from exceeding the position and exercise limits set by another exchange for non-Amex listed option contracts. Thus, if an Amex member exceeds the position and exercise limits of another options exchange, and the Amex member is not a member of the exchange which lists the options, then neither the Amex or the exchange that lists the options is able to enforce its position and exercise limits against the Amex member. The proposal eliminates this loophole and strengthens the Exchange's rules by requiring an Amex member who trades non-Amex listed option contracts on another exchange, and who is not a member of that exchange, to comply with the option position and exercise limits set by the exchange where the transactions are effected.[9]

As the Commission has noted in the past,[10] options position and exercise limits are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations [11] and for corners or squeezes of the underlying market. The proposal extends the benefits of the position and exercise limit rules to include all exchange-traded options transactions entered into by Amex members by bringing an Amex member's customer transactions in non-Amex exchange listed options within the Amex's jurisdiction for position and exercise limit purposes.

Finally, the Commission notes that the Amex's proposal to amend Amex Rules 904 and 905 is identical to proposals recently approved by the Commission.[12]

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acting in concert. Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five conservative business days.

[4] In Amendment No. 1, the Amex indicated that it will apply the interpretations and policies of another exchange when applying that exchange's position and exercise limit rules to an Amex member's transactions on that exchange. In addition, the Amex stated that it will take disciplinary action pursuant to its own rules if the Amex finds that an Amex member has violated the position and exercise limit rules of another exchange. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Derivatives Regulation, Office of Self-Regulatory Oversight, Division of Market Regulation, Commission, dated September 19, 1995 (''Amendment No. 1'').

[5] Securities Exchange Act Release No. 36353 (October 10, 1995), 60 FR 54266.

[6] In partially approving the Amex's proposal, the Commission is not approving, at this time, the portion of the proposal amendment Amex Rule 900(a).

[7] See Amendment No. 1, *supra* note 4. The Commission notes that the position and exercise limits in equity options are uniform among all options markets.

[8] 15 U.S.C. 78f(b)(5) (1988 & Supp. V 1993).

[9] Under the proposal, the Amex will also apply the interpretations and policies of the exchange where the options transactions are effected. The Amex will take disciplinary action pursuant to its own rules when it finds that an Amex member has violated the position and exercise limit rules of another exchange. See Amendment No. 1, *supra* note 4.

[10] See, *e.g.*, Securities Exchange Act Release No. 33283 (December 3, 1993), 58 FR 65204 (December 13, 1993) (order approving File No. SR–CBOE–93–43).

[11] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established derivatives position.

[12] See Securities Exchange Act Release Nos. 36242 (September 18, 1995), 60 FR 49305 (September 22, 1995) (order approving File No. SR–CBOE–95–22); 36257 (September 20, 1995), 60 FR 50228 (September 28, 1995) (order approving File No. SR–PHLX–95–31); and 36350 (October 6, 1995), 60 FR 53654 (October 16, 1995) (order approving File No. SR–PSE–95–17).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the portion of the proposed rule change (SR–Amex–95–35) amending Amex Rules 904 and 905 is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30529 Filed 12–14–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36569; File No. SR–SCE–95–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Cincinnati Stock Exchange, Inc., Relating to the Definitions of Public and Professional Agency Orders

December 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 29, 1995, the Cincinnati Stock Exchange, Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE hereby proposes to amend the definition of public agency order and professional agency order as follows, with added language in italics and deletions in brackets:

Rule 11.9 National Securities Trading System

(a) No Change.

(1) through (6) No Change.

(7) The term ''public agency order'' means any order for *an account covered by Section 11(a)(1)(E) of the Securities Exchange Act of 1934* [the account of a person other than a member, an Approved Dealer, or a person who could become an Approved Dealer by complying with this Rule with respect to his use of the System], which is represented, as agent, by a User.

(8) The term ''professional agency order'' means an order entered by a User as agent for the account of a broker-dealer *or for an account which is not covered by Section 11(a)(1)(E) of the Securities Exchange Act of 1934.*

(b) through (u) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CSE Rule 11.9(*l*) grants ''public agency'' orders a special time priority on the CSE, *i.e.,* public agency orders have priority over professional agency orders at the same price. The intent of the proposed rule change is to ensure that the privilege of this super-priority is granted only to those for whom it was originally intended by clarifying the distinction between ''public agency'' and professional agency'' order flow.[1]

Paragraph (1)(E) in Section 11(a) of the Act, which addresses certain issues related to trading by Exchange members, segregates for special treatment ''any transaction for the account of a natural person, the estate of a natural person, or a trust created by a natural person for himself or another natural person.'' The New York Stock Exchange (''NYSE'') utilizes this definition of public agency business in NYSE Rule 80A, its rule for limiting trading during significant market declines. Specifically, NYSE Rule 80A(e)(iii) defines an ''account of an individual investor'' as ''an account covered by Section 11(a)(1)(E) of the Securities Exchange Act of 1934.'' The CSE is proposing to incorporate Section 11(a)(1)(E) into its definition of public and professional agency orders. The Exchange believes that it is appropriate to articulate definitions of agency business that are consistent with the general understanding and practice of the securities industry.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CSE informed the other Intermarket Trading System participants of its intent to file this rule proposal, and no comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the forgoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the purposed rule change between the Commission and any person, other than those that maybe withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions

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[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1994).

[1] The Commission notes that several of the Exchanges' rules, such as its order guarantee and preferencing rules, distinguish between public and professional agency orders. Thus, the proposed rule change would affect certain orders in these contexts as well. See, *e.g.,* CSE Rules 11.9(c) and (u).

should refer to File No. SR–CSE–95–10 and should be submitted by January 4, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30530 Filed 12–14–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36570; File No. SR–NSCC–95–14]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Amending NSCC's By-Laws to Provide for an Additional Member of the Board of Directors

December 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] notice is hereby given that on November 3, 1995, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends Article II, Section 2.1 of NSCC's by-laws to allow for an additional member of its board of directors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

When NSCC was originally formed, the number of directors on its board was sixteen. In order to provide a greater representation by participants in the management of NSCC, this number was increase to seventeen in 1984, to eighteen in 1989, and to nineteen in 1994.[3] Since that time, NSCC has continued to expand its list of participants, and NSCC believes that it is in its participants' interest that the number of directors again be increased.[4] NSCC's by-laws permit the number of directors to be increased from time to time.[5] The proposed rule change consists of an amendment to the by-laws which increases the number of directors on the board from nineteen to twenty. The additional participant director will further the opportunity for participants to be represented on the board.

The proposed rule change is consistent with Section 17A of the Act in that it increases the opportunity for NSCC's participants to be involved in the administration of NSCC's affairs.[6]

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(C) states that the rules of a clearing agency must assure fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.[7] The Commission believes that the proposed increase in the number of directors on the board is consistent with NSCC's obligations under Section 17A because the result will be a board which better reflects NSCC's participants. As a result, participants will be afforded additional opportunities to raise, discuss, and help resolve issues that affect them.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because it will give NSCC the opportunity to have the additional participant member elected prior to and possibly participate in NSCC's next board meeting, which is scheduled for December 14, 1995.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5. U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR–NSCC–95–14 and should be submitted January 5, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–95–14) be and hereby is approved.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release Nos. 27984 (May 2, 1990), 55 FR 19400 and 33852 (April 13, 1994), 59 FR 17634.

[4] Pursuant to NSCC's shareholders agreement, one director represents each of NSCC's shareholders (the New York Stock Exchange, the American Stock Exchange, and the National Association of Securities Dealers), one director represents management, and the remaining directors are selected from NSCC's participants. Thus, the additional director will be selected from NSCC's participants.

[5] The number of directors may be increased or decreased at any time by amendment of the by-laws by either a vote of the shareholders entitled to vote for election of directors or by majority of the entire board.

[6] 15 U.S.C. 78q–1 (1988).

[7] 15 U.S.C. 78q–1(b)(3)(C) (1988).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–30568 Filed 12–14–95;8:45am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Order of the United States District Court for the Central District of California, dated July 1, 1976, the United States Small Business Administration hereby revokes the license of , a California corporation, to function as a small business investment company under the Small Business Investment Company License No. 09/14-0012 issued to Investcal Small Business Investment Company on June 30, 1972 and said license is hereby declared null and void as of December 11, 1995.

Dated: December 11, 1995.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–30535 Filed 12–14–95; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Order of the United States District Court for the Eastern District of California, dated October 6, 1995, the United States Small Business Administration hereby revokes the license of Yosemite Capital Investment Co., Inc., a California corporation, to function as a small business investment company under the Small Business Investment Company License No. 09/09–5236 issued to Yosemite Capital Investment Co., Inc. on July 17, 1979 and said license is hereby declared null and void as of December 11, 1995.

Dated: December 11, 1995.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment

[FR Doc. 95–30536 Filed 12–14–95; 8:45 am]

BILLING CODE 8025–01–P

Providence Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Providence District Advisory Council will hold a public meeting on Friday, January 5, 1996 at 8:00 a.m. at the Providence Marriott, Charles at Orms Streets, Providence, Rhode Island to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call the office of the District Director, Providence District Office, U.S. Small Business Administration, 380 Westminster Street, Providence, Rhode Island 02903, (401) 528–4580.

Dated: December 8, 1995.

Art DeCoursey,

Director, Office of Advisory Council.

[FR Doc. 95–30520 Filed 12–14–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 12/ 8/95

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–902
Date filed: December 4, 1995
Parties: Members of the International Air Transport Association
Subject:
TC23 Reso/P 0725 dated December 1, 1995 r1–8
TC23 Reso/P 0728 dated December 1, 1995 r9–15
Expedited Middle East-TC3 resos
Intended effective date: expedited January 31/February 1, 1996

Docket Number: OST–95–903
Date filed: December 4, 1995
Parties: Members of the International Air Transport Association
Subject:
TC23 Reso/P 0715 dated November 24, 1995 r1–6
TC23 Reso/P 0716 dated November 24, 1995 r7
TC23 Reso/P 0717 dated November 24, 1995 r8–9
Europe-Japan/Korea Expedited Resos
Intended effective date: expedited January 15, 1996

Docket Number: OST–95–904
Date filed: December 4, 1995
Parties: Members of the International Air Transport Association
Subject:
TC2 Reso/P 1871 dated December 1, 1995 r1
TC2 Reso/P 1872 dated December 1, 1995 r2–7
Expedited Middle East-Africa resos
Intended effective date: expedited January 14/15, 1996

Docket Number: OST–95–913
Date filed: December 6, 1995
Parties: Members of the International Air Transport Association
Subject:
TC23 Reso/P 0722 dated December 1, 1995 r1
TC23 Reso/P 0723 dated December 1, 1995 r2–6
Expedited Africa-TC3 resos
Intended effective date: expedited January 31/February 1, 1996

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–30574 Filed 12–14–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending December 8, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–900
Date filed: December 4, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 1, 1996
Description: Application of Piedmont Aviation Services, Inc., pursuant to 49 U.S.C. 41101 and 204.5 and Subpart Q of the Regulations, requests a fitness determination and issuance of a certificate of public convenience and necessity to engage in charter foreign air transportation of persons, property and mail.

Docket Number: OST–95–907
Date filed: December 5, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 2, 1996
Description: Application of Time Air Inc., pursuant to 49 U.S.C. 41304 and

Subpart Q of the Regulations, applies for amendment of its foreign air carrier permit to operate scheduled and nonscheduled foreign air transportation of persons, property and mail to and from any point in the territory of Canada to and from any point in the territory of the United States, including at its option two or more points in the territory of the United States in a through-service carrying no local passengers or cargo between points in the territory of the United States.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–30575 Filed 12–14–95; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 95–96; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1992 and 1993 Mercedes-Benz 500SEL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992 and 1993 Mercedes-Benz 500SEL passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1992 and 1993 Mercedes-Benz 500SEL passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 16, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

G&K Automotive Conversion, Inc. of Santa Ana, California (''G&K'') (Registered Importer 90–007) has petitioned NHTSA to decide whether 1992 and 1993 Mercedes-Benz 500SEL (Model ID 140.051) passenger cars are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are the 1992 and 1993 Mercedes-Benz 500SEL passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1992 and 1993 Mercedes-Benz 500SEL passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S. certified 1992 and 1993 Mercedes-Benz 500SEL passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1992 and 1993 Mercedes-Benz 500SEL passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) placement of a seat belt warning symbol on the seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.- model headlamps and front sidemarkers; (b) installation of U.S.- model taillamp lenses which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side convex rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN

reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer. The petitioner states that all non-U.S. certified 1992 and 1993 Mercedes-Benz 500SEL passenger cars built prior to September 1993 are equipped with driver's side air bags and knee bolsters, and that those built after September 1993 are equipped with both driver's and passenger's side air bags and knee bolsters. The petitioner further states that these vehicles are equipped with Type 2 seat belts in both front and rear outboard seating positions.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1992 and 1993 Mercedes-Benz 500SEL passenger cars must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 12, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–30576 Filed 12–14–95; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 95–86; Notice 1]

Isis Imports Ltd. Receipt of Application for Temporary Exemption From Federal Motor Vehicle Safety Standards No. 208 and 214

Isis Imports Ltd. of San Francisco, California, (''Isis'') has applied for a temporary exemption of two years from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection,* and of three years from Federal Motor Vehicle Safety Standard No. 214 *Side Impact Protection.* The basis of the application is that compliance will cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

This notice of receipt of an application is published in accordance with the requirements of 49 U.S.C. 30113(b)(2) and does not represent any judgment of the agency on the merits of the application.

The make and type of passenger car for which exemption is requested is the Morgan open car or convertible. Morgan Motor Company (''Morgan''), the British manufacturer of the Morgan, has not offered its vehicle for sale in the United States since the early days of the Federal motor vehicle safety standards. It is the business of Isis to buy incomplete Morgan cars from the British manufacturer and import them as motor vehicle equipment, completing manufacture by the addition of engine and fuel system components. They differ from their British counterparts, not only in equipment items and modifications necessary for compliance with the Federal motor vehicle safety standards, but also in their fuel system components and engines, which are propane fueled. As the party completing manufacture of the vehicle, Isis certifies its conformance to all applicable Federal safety and bumper standards. The vehicle completed by Isis in the U.S. is deemed sufficiently different from the one produced in Britain that NHTSA considers Isis the manufacturer, not a converter, even though the brand names are the same.

Morgan itself produced around 470 cars in 1994, while in the year preceding the filing of its petition in September 1995, Isis produced 14 cars for sale in the United States. Twice previously NHTSA has exempted Isis from compliance with the automatic restraint requirements of Standard No. 208 on hardship grounds, the latest exemption expiring November 1, 1995. The staff of Isis consists of three full time employees and one part time employee. Its cumulative net income for the years 1992–94 totals $34,694.

Application for Exemption From Standard No. 208

Isis received NHTSA Exemptions Nos. 89–4 and 92–7 from S4.1.2.1 and S4.1.2.2 of Standard No. 208, respectively expiring October 1, 1992 and November 1, 1995 (54 FR 43647 and 57 FR 60564). Under the first exemption, it had sought to comply through a motorized belt system, then concluded that an air bag system would be preferable. At the time that its second exemption was granted, Isis had received proposals from air bag suppliers that it deemed prohibitive in cost. However, it hoped to have access to a system under development by Range Rover, or to aftermarket retrofit components.

According to the applicant, sufficient progress has been made during its second three-year exemption period that it can foresee compliance in only two more years. Morgan itself intends to equip its cars with air bags and has begun a test program towards this end. To date, 5 of 6 Hy-ge sled tests have been conducted. Body modifications are being engineered. Morgan is currently negotiating for ''multi-point sensor air bag components'', and estimates that it will take 12 to 18 months to complete the project ''once we are given permission to use the components, most of which have already been sourced.'' Until such time, Isis will continue to use manual three-point restraint systems in its cars.

Application for Exemption from Standard No. 214

Isis claims that it has insufficient resources to work towards compliance with those requirements until its work on complying with Standard No. 208 is completed. It has had discussions with the British Motor Industry Research Association to identify the components that may require alteration, such as the door latches and interior padding. In its view, ''it would not be prudent to test for side impact until we complete our modifications of the seating area and knee bolster assembly and finalize the air bag configuration, as changes in this area would be reflected in the performance of the vehicle in side-impact testing.'' It does, however, meet the previous side door strength requirements of the standard, and will work towards compliance during the three-year exemption period for which it has asked. Were the phase-in requirement of S8 applied to it, calculated on the basis of its limited

production, only very few cars would be required to meet the standard.

Safety and Public Interest Arguments

Because of the small number of vehicles that the applicant produces and its belief that they are used as second or third cars for short mileage open air excursions rather than for daily commuting, and because of the three-point restraints and side impact protection currently offered, Isis argues that an exemption would be in the public interest and consistent with safety. An exemption would allow it to ''maintain the existing diversity of motor vehicles available in this country.'' Finally, because of its expertise in the use of propane as a fuel, Isis is ''in a position to contribute to the growth of the alternative fueled vehicle industry.''

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered.

Notice of final action on the application will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: January 16, 1996.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: November 28, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–30577 Filed 12–14–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Revised Time Frames Regarding Test of Reconciliation for Adjustments Made to the Price of Imported Merchandise by Related Party Companies Under 26 U.S.C. 482

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revised time frames for test.

SUMMARY: This document announces Customs decision to revise the time frames regarding the test Customs plans to conduct involving the use of reconciliation for those related party importers which have reason to believe upward adjustments may be made to the price of imported merchandise for tax purposes pursuant to 26 U.S.C. 482. In a prior Federal Register notice (60 FR 46141), Customs set out the eligibility requirements for voluntary participation in the test and described the basis on which Customs will select participants. This notice revises the time frames for both applicants to volunteer and for the commencement and conclusion of the planned test.

DATES: Applications to participate in this reconciliation test must be filed with and approved by Customs on or before May 1, 1996. The test will commence no earlier than May 1, 1996, and will cover entry summaries filed by selected participants from May 1, 1996, to December 31, 1996, or the end of the participant's tax year, whichever comes first. Participants must file the reconciliation summary, which provides the outstanding value information, within 15 months of the filing of the first affected entry summary or by July 31, 1997, whichever comes first.

ADDRESSES: To be considered for voluntary participation in this test, applications should be submitted to Mr. William F. Inch, Director, Office of Regulatory Audit, Office of Strategic Trade, U.S. Customs Service, 1301 Constitution Avenue, N.W., Room 2311, Washington, D.C. 20229–0001. Once the test is underway, reconciliation summaries shall be filed to the attention of Mr. Matthew Krimski, Office of Regulatory Audit, Office of Strategic Trade, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Matthew Krimski, (202) 927–0411.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 1995, Customs published a document in the Federal Register (60 FR 46141) announcing plans to conduct a test regarding the use of reconciliation for those related party importers which have reason to believe upward adjustments may be made to the price of imported merchandise for tax purposes pursuant to 26 U.S.C. 482. The document described the objectives of the test, the application process to participate, the eligibility criteria, selectivity criteria and test evaluation criteria. The document invited public participation in the test and set forth a deadline for applications at no later than October 1, 1995. The planned commencement of the test was October 1, 1995.

Customs is now revising certain elements of the September 5, document. Customs now plans to begin the test no earlier than May 1, 1996, and the test will cover entry summaries filed by the selected participants from May 1, 1996, to December 31, 1996, or the end of the participant's tax year, whichever comes first.

Participants must file the reconciliation summary, which provides the outstanding value information, within 15 months of the filing of the first affected entry summary or by July 31, 1997, whichever comes first. Further, by applying, applicants agree that the value for merchandise covered by all entry summaries filed by them or on their behalf on or after May 1, 1996, until the end of the tax year or December 31, 1996, whichever comes first, shall be finally determined by the liquidation of the reconciliation filed in accordance with the test.

The time frame for Customs acceptance and approval of applications to participate in the test has been revised to May 1, 1996. Applications shall be addressed to Mr. William F. Inch as indicated above in this document.

To be eligible to participate in the test, a participant's tax year must end between May 1, 1996 and December 31, 1996.

For purposes of the reconciliation test, reconciliation summaries shall be filed to the attention of Matthew Krimski, Office of Regulatory Audit, Office of Strategic Trade, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

Aside from the revised information set forth in this document, all other information regarding the reconciliation test set forth in the Federal Register document of September 5, 1995, is still applicable.

Dated: December 6, 1995.

Karen J. Hiatt,

Acting Assistant Commissioner, Office of Strategic Trade.

[FR Doc. 95–30516 Filed 12–14–95; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Receipt of Cultural Property Request From the Government of Nicaragua

AGENCY: United States Information Agency.

ACTION: Notice of Receipt of Cultural Property Request from the Government of Nicaragua.

The Government of Nicaragua has submitted a cultural property request to the Government of the United States under Article 9 of the 1970 UNESCO Convention. The request was received on November 27, 1995, by the United States Information Agency. The request seeks U.S. protection of certain categories of archaeological material the pillage of which, it is alleged, jeopardizes the national cultural patrimony of Nicaragua. In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603 *et seq*) the request will be reviewed by the Cultural Property Advisory Committee which will develop recommendations before a determination is made.

Dated: November 28, 1995.

Penn Kemble,

Deputy Director, United States Information Agency.

[FR Doc. 95–30585 Filed 12–14–95; 8:45 am]

BILLING CODE 8230–01–M

Meeting of the Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting at Hialeah City Hall, 501 Palm Avenue, Hialeah, Florida on Thursday, December 14, 1995, at 6:00 p.m.

The intended agenda is listed below.

Advisory Board for Cuba Broadcasting Meeting, Thursday, December 14, 1995

Agenda

Part One—Closed to the Public

Technical Operations Update

Part Two—Open to the Public

I. Update on Radio and T.V. Martí
II. Presentations
III. Approval of Minutes
IV. Report on Congress
  (a) Budget
  (b) Relocation to Miami
V. Investigations Update
VI. External Review Panels
VII. USIA International Programs
VIII. Public Testimony
IX. Old Business
X. New Business

Members of the public interested in attending the meeting should contact Ms. Angela R. Washington, at the Advisory Board Office. Ms. Washington can be reached at (202) 401–2178.

Due to the limited availability of Advisory Board members and other scheduling problems and the need to move the project forward, this announcement will appear for less than 15 days.

Determination to Close Portions of the Advisory Board Meeting of December 14, 1995

Based on information provided to me by the Advisory Board for Cuba Broadcasting, I hereby determine that the 6:00 p.m. to 6:30 p.m. portion of the meeting should be closed to the public.

The Advisory Board has requested that the Technical Operations Update of the December 14, 1995, meeting be closed to the public. This item will involve information the premature disclosure of which would likely frustrate implementation of a proposed Agency action. Closing such deliberations to the public is justified by the Government in the Sunshine Act under 5 U.S.C. 522b(c)(9)(B).

Part one of the agenda consists of a discussion of technical matters, which include TV Marti transmissions.

Dated: December 8, 1995.

Joseph Duffey,

Director, United States Information Agency.

[FR Doc. 95–30586 Filed 12–14–95; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Scientific Review and Evaluation Board for Health Services Research and Development Service, Notice of Meeting

The Department of Veterans Affairs, Veterans Health Administration, gives notice under Public Law 92–463, that a meeting of the Scientific Review and Evaluation Board for Health Services Research and Development Service will be held at the Marriott Copley Place, 110 Huntington Avenue, Boston, MA, January 9 through January 11, 1996. The session on January 9, 1996, is scheduled to begin at 1:00 p.m. and end at 5:00 p.m. (EST). The sessions scheduled for January 10 and 11 are scheduled to begin at 8:00 a.m. and end at 5:00 p.m. (EST). The purpose of the meeting is to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit. Recommendations regarding their funding are prepared for the Associate Chief Medical Director for Research and Development.

This meeting will be open to the public (to the seating capacity of the room) at the start of the January 9 session for approximately a half an hour to cover administrative matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by the subsection 10(d) of Public law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mr. Bill Judy, Review Program Manager (12B3), Health Services Research and Development Service, Department of Veterans Affairs, 810 Vermont Avenue, NW, (Techworld), Washington, DC 20420 (phone: 202–565–7425) at least five days before the meeting.

Dated: December 7, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–30531 Filed 12–14–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 241
Friday, December 15, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, December 12, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) a personnel matter; (2) matters relating to the Corporation's corporate and supervisory activities; and (3) an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: December 12, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–30662 Filed 12–13–95; 2:31 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, December 19, 1995, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and/or by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Establishment of a New System of Records (Vacancy Announcement Tracking System).

Memorandum and resolution re: Withdrawal of a proposed rule prescribing by regulation that certain liabilities of an insured depository institution are deposit liabilities by general usage.

Memorandum re: Contract to Provide Management Services.

Discussion Agenda

Memorandum re: The Corporation's 1996 Budget.

Memorandum re: Alternative Dispute Resolution Report.

Memorandum and resolution re: Final amendments to Part 360 of the Corporation's rules and regulations, entitled ''Resolution and Receivership Rules,'' which include spot and other short-term foreign exchange agreements and repurchase agreements on qualified foreign government securities within the definition of ''qualified financial contracts'' (QFCs) under the Federal Deposit Insurance Act.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: December 12, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–30663 Filed 12–13–95; 2:31 pm]

BILLING CODE 6714–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

INSTITUTE OF MUSEUM SERVICES

Notice of Meeting

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME/DATE: 10:30 a.m.–1:00 p.m.—Friday, January 12, 1996.

STATUS: Open.

ADDRESS: The Madison Hotel, 15th and M Streets, NW, Washington, DC 20005, 202/862–1740.

FOR FURTHER INFORMATION CONTACT: Elsa Mezvinsky, Special Assistant to the Director, Institute of Museum Services, 1100 Pennsylvania Avenue, N.W., Room 510, Washington, D.C. 20506 (202) 606–8536.

SUPPLEMENTARY INFORMATION:

The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of Friday, January 12 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506 (202) 606–8536 TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

65th Meeting of the National Museum Services Board the Madison Hotel, Friday, January 12, 1996, 10:30 a.m.—1:00 p.m.

Agenda

I. Chairman's Welcome and Approval of Minutes
II. Director's Report
III. Appropriations Report
IV. Legislative/Public Affairs Report
V. IMS Programs Report
VI. Twentieth Anniversary Report

Dated: December 7, 1995.

Linda Bell,

Director of Policy, Planning and Budget, National Foundation on the Arts and the Humanities, Institute of Museum Services.

[FR Doc. 95–30703 Filed 12–13–95; 3:44 pm]

BILLING CODE 7036–01–M

Federal Register

Friday
December 15, 1995

Part II

Department of Education

34 CFR Part 361

The State Vocational Rehabilitation Services Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 361

RIN 1820–AB12

The State Vocational Rehabilitation Services Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing The State Vocational Rehabilitation Services Program. These amendments are needed to implement changes to the Rehabilitation Act of 1973 (Act) made by the Rehabilitation Act Amendments of 1992, enacted on October 29, 1992, as amended by the 1993 technical amendments (hereinafter collectively referred to as the 1992 Amendments).

DATES: Comments must be received on or before February 23, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Fredric K. Schroeder, U.S. Department of Education, 600 Independence Avenue SW., Room 3028, Mary E. Switzer Building, Washington, D.C. 20202–2531. Comments transmitted by facsimile should be sent to (202) 205–9772. Comments can be transmitted in an electronic format either through the electronic bulletin board system (BBS) of the Rehabilitation Services Administration (RSA) or through internet. The internet address is ''State__VR@ed.gov''. The access number for the RSA BBS is (202) 205–5574 for low speed (2400 BPS or lower) modems and (202) 205–6174 for high speed (9600 BPS and higher) modems. Comments can also be transmitted to the RSA BBS through Fedworld via internet using the telnet command. Telnet to: ''Fedworld.gov''. All comments transmitted in an electronic format should be sent to the following RSA BBS mailbox: ''RSADPPES''. To facilitate the analysis of comments, electronic transmission of comments is preferred. Also, comments should be specific and identified by proposed regulatory citation. Comments received by RSA after the due date for comments will not be considered.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Beverlee Stafford, U.S. Department of Education, 600 Independence Avenue SW., Room 3014, Mary E. Switzer Building, Washington, D.C. 20202–2531. Telephone (202) 205–8831. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5538.

SUPPLEMENTARY INFORMATION: The State Vocational Rehabilitation Services Program (program) is authorized by Title I of the Act (29 U.S.C. 701–744). This program provides support to each State to assist it in operating a comprehensive, coordinated, effective, efficient, and accountable State program to assess, plan, develop, and provide vocational rehabilitation (VR) services to individuals with disabilities so that those individuals may prepare for and engage in gainful employment, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. The program supports the National Education Goal that, by the year 2000, every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Regulations for this program were last published in their entirety on May 12, 1988 (53 FR 16978) to implement the 1986 amendments to the Act and are codified in 34 CFR Part 361. In addition, a notice of proposed rulemaking (NPRM) for this program was published on July 3, 1991 (56 FR 30620) (1991 NPRM), but it was never finalized.

In the 1991 NPRM, the Secretary proposed amendments to the regulations for this program that were designed to reduce regulatory burden on States and to place greater administrative discretion at the State level. More specifically, the 1991 NPRM proposed to remove or reduce certain State plan, paperwork, and reporting requirements not mandated by statute, to clarify the regulations through more precise definitions, and generally to simplify and condense the regulations. At the request of the Congress, the proposed regulations in the 1991 NPRM were not finalized because the Rehabilitation Act Amendments of 1992 were being developed at that time.

The 1992 Amendments made extensive changes to Title I of the Act that have far-reaching implications for the program. One of the major themes of the 1992 Amendments is the empowerment of individuals with disabilities in terms of influence on the State plan and State vocational rehabilitation policy through membership on the State Rehabilitation Advisory Council or an independent commission and increased participation in the development, implementation, and evaluation of their individualized written rehabilitation programs through informed choice. The statute also requires that designated State units (DSUs) provide for the use of appropriate modes of communication and accessible formats to ensure equal access for individuals with disabilities who need this assistance.

A related theme is the integration of individuals with disabilities into the full spectrum of American life. The 1992 Amendments requires both that vocational rehabilitation services be provided in the most integrated settings possible and that employment outcomes be in the most integrated settings possible.

Another key theme of the 1992 Amendments is to improve access to the vocational rehabilitation system. The amendments streamline the process for making eligibility determinations by requiring the use of existing information to the extent possible, by adding a presumption of benefit from services, and by providing a 60-day time limit for making eligibility determinations.

The 1992 Amendments also focuses on expanding and improving the quality of services by requiring States to develop a strategic plan, by requiring States to develop a comprehensive system of personnel development to ensure that DSU personnel are adequately trained and meet the State's highest standards, and by requiring the development of standards and indicators to evaluate the performance of State programs. The evaluation standards and performance indicators are being developed separately and are not addressed in this NPRM.

Finally, the 1992 Amendments focuses on expanding and improving services to certain groups of individuals with disabilities. The amendments include new order of selection and eligibility provisions that are designed to increase and improve services for individuals with severe disabilities, particularly individuals with the most severe disabilities. The amendments also contain new outreach requirements that are designed to increase services to individuals with disabilities who are members of groups that are currently unserved and underserved, including members of minority groups. In addition, the amendments contain provisions that are designed to increase coordination between education agencies and DSUs to better serve individuals with disabilities who are transitioning students.

This NPRM proposes changes to implement the 1992 Amendments to Title I Parts A, B, and C of the Act (with the exception of the strengthened order

of selection requirements in sections 12(d) and 101(a)(5)(A) of the Act, the evaluation standards and performance indicator requirements in section 106 of the Act, and the client assistance program requirements in section 112 of the Act, which are being implemented in separate rulemaking documents) and proposes to incorporate some of the changes that were previously proposed in the 1991 NPRM to reduce the administrative burden on States. This NPRM also proposes other changes that the Secretary believes are important to update, consolidate, clarify, and in other ways improve the regulations for this program.

Executive Order 12866 encourages Federal agencies to facilitate meaningful participation in the regulatory development process. Accordingly, prior to drafting this NPRM, RSA, on March 31, 1994, made draft proposed regulations (draft regulations) available in accessible formats, including an electronic format, to a broad spectrum of parties for informal review and comment. Over 600 letters of comments on the draft regulations were analyzed. RSA also gathered public input on the draft regulations through public meetings held in Washington, D.C. on April 19, May 12, and May 17, 1994; Chicago on April 26, 1994; and Oakland, California on May 4 and May 5, 1994; and through public teleconferences on April 20, May 13, May 18, and June 8, 1994. In addition, three separate focus groups were convened in June 1994 to allow for further discussion of three discrete issues: eligibility under the program, informed choice in the selection of services and service providers, and the standards related to the achievement and maintenance of an employment outcome.

The following is a section-by-section summary of the regulations proposed in this NPRM, including an explanation of the major provisions, how they differ from the existing and the draft regulations, and the reasons the Secretary is proposing them. In addition, in order to clarify proposed organizational changes, the summary identifies the sections of the current regulations, as well as the sections of the statute, on which every section of the proposed regulations is based.

Changes to the draft regulations that appear in this NPRM were made in response to public comments received by RSA and input provided during the public meetings, teleconferences, and focus groups. Significant changes to the draft regulations are discussed in the section-by-section summary. However, minor technical and structural changes that do not significantly alter the provisions of the draft regulations are not discussed.

In response to public commenters who viewed some of the paperwork requirements in the draft regulations as unduly burdensome, the Secretary has proposed in the NPRM eliminating or consolidating documentation requirements wherever feasible. Those requirements that would remain in the proposed regulations are considered essential to the proper administration of the program. Paperwork requirements in the following sections of the draft regulations have been removed or reduced: §§ 361.13(c), 361.19, 361.20(b), 361.21 (a) and (b), 361.22(a)(1), 361.29 (a)(2) and (a)(4), 361.33(b), 361.46, 361.47, 361.52, and 361.53(a)(3).

In addition, the draft regulations have been reviewed and revised in accordance with the Department's principles for regulating, which were developed as part of the Administration's regulatory reinvention initiative under the National Performance Review II. The principles are designed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. As a result of that review, additional non-statutory requirements in the draft regulations have been eliminated or modified to reduce paperwork or process requirements on States and to increase State flexibility in meeting statutory requirements. These proposed changes are identified in the section-by-section summary.

The proposed regulations, like the draft regulations, provide guidance through examples in the following three areas: permissible expenses under the definition of ''maintenance''; permissible expenses under the definition of ''transportation''; and meeting the final eligibility criterion (an individual with a disability must require VR services) under § 361.42. Some public commenters on the draft regulations opposed the use of examples on the grounds that they would interfere with individual counselor judgment, whereas other commenters supported their use as an effective means of ensuring that counselors had ready access to information typically found in guidance materials. By including the examples in the regulations, the Secretary intends to make the regulations more comprehensive and useful. The Secretary emphasizes, both here and throughout the section-by-section summary, that the examples are provided solely for the purposes of illustration, do not address all situations that a rehabilitation counselor may face, and are not intended to preclude individual counselor judgment on a case-by-case basis. The examples are merely guidance material to which rehabilitation professionals can quickly refer.

References in the section-by-section summary to the ''proposed regulations,'' as opposed to the ''draft regulations,'' refer to regulatory provisions included in this NPRM.

Section-by-Section Summary

Section 361.1—Purpose

This proposed new section of the regulations would incorporate the language in section 100(a)(2) of the statute, which emphasizes the goal of gainful employment for individuals with disabilities and the responsibility of States to operate comprehensive, coordinated, effective, efficient, and accountable programs that are designed to assess, plan, develop, and provide vocational rehabilitation services. The Secretary interprets the statutory term ''gainful employment'' to have the same meaning as the term ''employment outcome,'' as it is defined in the proposed regulations.

Section 361.2—Eligibility for a Grant

This new section is proposed for clarification. A similar section was proposed in the 1991 NPRM.

Section 361.3—Authorized Activities

This new section is proposed to clarify how the funds under this program can be used. A similar section was proposed in the 1991 NPRM. It also incorporates the new statutory provision in section 111(a)(1) of the Act that funds may be used to develop and implement the strategic plan.

Section 361.4—Applicable Regulations

This proposed section would revise § 361.1(b)(1) of the existing regulations to clarify that the reference to 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations) applies only to the award of subgrants by vocational rehabilitation agencies to entities that are not State or local governments or Indian tribal organizations and to remove the reference to 34 CFR Part 78 (The Education Appeal Board) because it has been deleted from the Education Department General Administrative Regulations (EDGAR). In addition, the proposed section would add references to 34 CFR Parts 80, 81, 82, 85, and 86 because those parts have been added to EDGAR since the regulations for this program were last revised, and they are applicable to this program.

Section 361.5—Applicable Definitions

This proposed section is taken from § 361.1(c) of the existing regulations. It has been revised to incorporate changes in the definitions in section 7 of the Act that were made by the 1992 Amendments. The definitions are organized alphabetically and are numbered for purposes of quick identification.

The following definitions from the current regulations are not included in the proposed regulations since the terms have been removed or replaced in the Act: ''employability,'' ''evaluation of vocational rehabilitation potential,'' ''initial expenditure,'' ''rehabilitation facility,'' and ''time-limited services.'' In addition, the term ''workshop'' is not used or defined in the proposed regulations. Statutory definitions of the following terms have been added to the proposed regulations without substantive change: ''assistive technology device,'' ''assistive technology service,'' ''extended services,'' ''impartial hearing officer,'' ''ongoing support services,'' ''personal assistance services,'' ''rehabilitation technology,'' ''supported employment,'' ''supported employment services,'' and ''transition services. In addition, definitions of ''American Indian'' and ''State'' have been revised to reflect statutory changes made by the 1992 Amendments.

Definitions of the terms ''community rehabilitation program'' and ''employment outcome,'' which are defined in the Act, have been revised to clarify or elaborate on the statutory definitions. The proposed definition of ''community rehabilitation program'' incorporates the definition in section 7(25) of the Act, but would add a definition of the word ''program'' to clarify that community rehabilitation programs do not include individual practitioners, such as physicians or physical therapists, who provide VR services but are not affiliated with an agency, organization, or institution that provides VR services as one of its major functions. This clarification is based on the Secretary's view that Congress did not intend for the assessment of the capacity and effectiveness of community rehabilitation programs and related requirements to include every individual person who provides VR services. However, the Secretary interprets the term community rehabilitation program and the associated requirements to apply to a vocational rehabilitation services unit of a hospital. In addition, in response to public comment on the draft regulations, the Secretary proposes to broaden the meaning of the term ''program'' from an entity that provides or facilitates the provision of VR services as its primary function to an entity that provides or facilitates the provision of VR services as one of its major functions. This change would enable, for example, a local affiliate of the United Cerebral Policy Foundation that provides VR services, in addition to disseminating information and providing educational services, to be considered a ''community rehabilitation program'' under the definition.

The proposed definition of ''employment outcome'' elaborates on the definition in section 7(5) of the Act by incorporating into the definition the concept in the Act that an employment outcome must be consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The proposed definition would replace the definition of ''employability'' in § 361.1 of the existing regulations. In response to the draft regulations, several commenters expressed concern about the scope of permissible employment outcomes under the definition. Although the proposed definition, unlike the current regulatory definition of ''employability,'' does not identify a full range of permissible employment outcomes under the vocational rehabilitation services program, the Secretary does not intend the proposed definition to exclude any employment outcome that has been permitted in the past. Thus, for example, homemaker, extended employment, and self-employment remain acceptable employment outcomes. The proposed definition does, however, recognize competitive employment as the optimal employment outcome under the program, and language emphasizing this has been added to the definition.

The Secretary proposes new definitions or revisions to the definitions in the existing regulations for the following terms that are not defined in the Act: ''administrative costs,'' ''applicant,'' ''appropriate modes of communication,'' ''comparable services and benefits,'' ''competitive employment,'' ''construction of a facility for a public or nonprofit community rehabilitation program,'' ''establishment, development, or improvement of a public or nonprofit community rehabilitation program,'' ''establishment of a facility for a public or nonprofit community rehabilitation program,'' ''extended employment,'' ''family member,'' ''individual's representative,'' ''integrated setting,'' ''maintenance,'' ''post-employment services,'' ''transitioning student,'' and ''transportation.''

The proposed definition of ''administrative costs'' is based on existing RSA subregulatory guidance and definitions of the term that are used in other RSA programs. The definition, which is substantially the same as the definition of ''administrative costs'' in the draft regulations, lists, as examples, certain types of expenses that would constitute administrative costs. Several commenters on the draft regulations suggested adding other items to the definition. In response, the Secretary has amended the definition of ''administrative costs'' to clarify that the types of expenses listed in the definition are intended only as examples and that other expenditures would be considered administrative costs as long as those expenditures relate to program planning, development, monitoring, and evaluation.

The Secretary proposes to define ''applicant'' for clarification by referencing the requirements for submitting an application in § 361.41(b)(2) of the proposed regulations.

In response to public comment on the draft regulations, the Secretary proposes to change the term ''special modes of communication'' to ''appropriate modes of communication'' to ensure consistency with the Americans with Disabilities Act (ADA). In addition, the Secretary proposes to eliminate references in the definition to individuals who are blind, deaf, or hearing-impaired to clarify that the proposed definition is not limited by type of disability and that it includes all appropriate modes of communication necessary to enable any individual with a disability to comprehend information being communicated.

Finally, the Secretary has expanded the list of examples of communication services and materials in the proposed definition. However, the Secretary does not consider the list to be all-inclusive and emphasizes that other appropriate modes of communication not specified in the proposed definition are also available.

The proposed definition of ''comparable services and benefits'' is based on a definition of that term that was proposed in the 1991 NPRM. It is intended to support the statutory purpose of conserving rehabilitation funds, while ensuring the provision of appropriate and timely services in lieu of those provided by the DSU. The proposed definition revises the definition proposed in the 1991 NPRM to remove private agencies (i.e., community, philanthropic, and other

private entities that are not VR service providers but do provide financial or other assistance to individuals with disabilities to help meet VR needs, such as scholarship assistance from a local Lions Club) as one of the sources of comparable services and benefits because the Secretary interprets the reference in the statute to ''other programs'' to mean other public programs. In addition, the Secretary believes it would be too burdensome to require State agencies to determine the availability of comparable services and benefits from private agencies prior to providing services and benefits under this program. The Secretary would, however, continue to encourage State agencies to use services and benefits that are available from private agencies to the extent they are known. In response to public comment on the draft regulations, the Secretary has further amended the term by clarifying that comparable services and benefits must be available ''within a reasonable period of time'' and must be commensurate with the services that the individual would otherwise receive from the VR agency.

In response to public comment on the draft regulations, the Secretary has consolidated the definitions of ''competitive employment'' and ''competitive work'' from the draft regulations into a single proposed definition of ''competitive employment.'' The consolidated definition recognizes that integration (i.e., an employment outcome in an integrated job setting) is an element of competitive employment, rather than a separate concept. It would establish a general requirement that individuals must receive compensation that is at or above the minimum wage, but not less than the prevailing community wage for non-disabled individuals performing the same or similar work.

The consolidated definition would apply to supported employment as well as to other kinds of competitive employment outcomes. Under the proposed definition, however, an employment outcome in a supported employment setting in which an individual receives wages below the minimum wage in accordance with section 14(c) of the Fair Labor Standards Act (FLSA) (i.e., wages based on individual productivity) would no longer be considered competitive employment. Although this proposed change would represent a significant departure from longstanding RSA regulatory policy, the Secretary agrees with those public commenters who suggested that competitive employment outcomes should be limited to those in which individuals are compensated at or above the minimum wage. In addition, this proposed change is consistent with section 101(a)(16) of the Act, which requires DSUs annually to review and reevaluate the status of each individual in an employment setting under section 14(c) of the FLSA in order to determine the individual's readiness for competitive employment. This statutory requirement indicates that supported employment settings in which individuals are compensated below minimum wage in accordance with the FLSA do not constitute competitive employment. The Secretary also notes that the proposed change would have the effect of requiring individuals in supported employment to earn at least the minimum wage in order to receive services under Title VI, Part C of the Act. Finally, so that the impact of this proposed change can be appropriately evaluated, the Secretary requests public comment on the extent to which individuals currently in supported employment earn less than the minimum wage.

The proposed definition of the term ''construction of a facility for a public or nonprofit community rehabilitation program'' is based on the definition of the term ''construction of a rehabilitation facility'' in § 361.1(c) of the existing regulations and the definition of the term ''construction'' in section 7(1) of the Act. The proposed regulations also incorporate the 1992 Amendments, which replaced the concept of rehabilitation facilities with ''community rehabilitation programs.'' The word ''facility'' is used in the proposed regulations only to refer to a ''building'' or ''structure.'' In addition, the Secretary proposes to fold into this definition all authorized construction expenditures under this program, which are currently contained in § 361.74(a) of the existing regulations.

The Secretary proposes to define the term ''eligible individual'' for clarification throughout the regulations by referencing the basic eligibility criteria in proposed § 361.42(a).

The proposed definition of the term ''establishment, development, or improvement of a public or nonprofit community rehabilitation program'' elaborates on the statutory definition of the term ''establishment of a community rehabilitation program'' by incorporating all of the types of expenditures for which a State unit can receive Federal financial participation. These provisions are taken from § 361.73(a) of the existing regulations and include the limitations on staffing costs initially proposed in the 1991 NPRM.

The Secretary proposes to define separately the term ''establishment of a facility for a public or nonprofit community rehabilitation program'' for purposes of clarification. The proposed definition covers only those authorized activities contained in the definition of ''establishment, development, or improvement of a public or nonprofit community rehabilitation program'' that involve facilities. In response to public comment about these three terms, the Secretary wishes to emphasize that funds under this program cannot be used to support community rehabilitation programs that are profitmaking organizations.

In response to public comment on the draft regulations, the Secretary has amended the proposed definition of the term ''extended employment'' to clarify that it means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act as well as any on-the-job support services the individual might require. In response to several commenters who expressed concern with language in the draft definition that stated that some individuals in extended employment ''are not ready for competitive employment,'' the Secretary has modified the proposed definition to clarify that the purpose of extended employment is to enable individuals to continue to train or otherwise prepare for competitive employment, unless the individual makes an informed choice to remain in extended employment.

In response to public comment, the definition of the term ''family member'' has been revised to mean any individual (1) who is a relative or guardian, or who lives in the same household as an applicant or eligible individual regardless of their interpersonal relationship; (2) who has a substantial interest in the well-being of that individual; and (3) who needs vocational rehabilitation services to enable the applicant or eligible individual to achieve an employment outcome.

In response to public comment on the draft regulations, the Secretary proposes to amend the definition of the term ''impartial hearing officer'' to clarify that a member of the DSU's rehabilitation advisory council may not serve as an impartial hearing officer for that same DSU. Under the proposed definition, however, a member of the State Rehabilitation Advisory Council could serve as an impartial hearing officer in cases involving another DSU within the same State. For example, a member of the State Rehabilitation

Advisory Council for a State unit serving individuals who are blind would not be precluded, solely on the basis of that membership, from serving as an impartial hearing officer in cases involving the State unit that serves individuals other than individuals with visual disabilities.

The Secretary proposes to include the term ''individual with a most severe disability'' in the definitions to clarify that States are required to define the term as a subset of and consistent with the definition of the statutory term ''individual with a severe disability.''

The Secretary proposes to define the term ''individual's representative,'' consistent with the list of potential representatives in the Act, so that the defined term, rather than the long list of potential representatives, can be referenced throughout the regulations. In response to public comment on the draft regulations, the Secretary proposes to amend the definition to clarify that it means any representative chosen by an applicant or eligible individual, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the interests of the individual, in which case the court-appointed representative is the individual's representative.

The proposed definition of the term ''integrated setting'' is designed to implement the intent of the statute that individuals receive VR services and achieve employment outcomes in the most integrated settings possible, consistent with the individual's informed choice. In the draft regulations the term was defined broadly to mean a setting in which the majority of individuals with whom individuals with disabilities interact meaningfully, excluding service providers, are non-disabled individuals. In response to public comment on the draft regulations, the Secretary proposes to amend the term by requiring that applicants or eligible individuals need only be given the opportunity to interact with non-disabled individuals, excluding service providers, on a regular basis for a setting to be considered integrated. This proposed change would permit employment at a center for independent living, for example, to be considered integrated as long as the employee has the opportunity to regularly interact with non-disabled persons, even though the Act requires that a majority of a center's employees be disabled. The proposed definition also applies to supported employment placements. A separate definition of ''integration'' for supported employment placements is, therefore, no longer needed and is not included in the proposed regulations.

''Maintenance'' would be defined to clarify that it includes living expenses (e.g., food, shelter, and clothing) only to the extent that they are in excess of an individual's normal expenses and that it is available only for eligible individuals and individuals receiving extended evaluation services. The proposed definition reflects statutory language in section 103(a)(5) of the Act that limits the provision of maintenance to ''additional costs while participating in rehabilitation.'' The Secretary considers an individual to be participating in rehabilitation if the individual is receiving services under an individualized written rehabilitation program (IWRP) or under a written plan for providing extended evaluation services. The provision of maintenance must be tied to other needed services. Maintenance, however, cannot be used to pay the expenses of all applicants receiving assessment services, as several commenters urged. As discussed later in the definitions section of the preamble, the Secretary believes, however, that the short-term costs of food and shelter of applicants who are required to travel to receive assessment services, and who are not receiving extended evaluation services, could be covered as a transportation expense. In addition, the Secretary proposes a note following the proposed definition of maintenance that provides examples of permissible maintenance expenses. The last example was added in response to public comment and indicates that maintenance can be used to cover the costs of food, shelter, and clothing of homeless or recently deinstitutionalized individuals until other financial assistance can be secured for those costs. The Secretary emphasizes that the examples are provided solely for the purposes of illustration and do not preclude designated State units from providing maintenance in other appropriate situations.

In response to public comment on the draft regulations, the Secretary proposes to amend the definition of the term ''ongoing support services'' by removing the requirement that the assessment of an individual's employment stability include one monthly contact with the individual's employer whenever the IWRP of an individual in supported employment provides for off-site monitoring. The Secretary emphasizes, however, that contacts with employers are authorized as follow-up services under paragraph (iii)(F) of the proposed definition and could be provided as often as necessary to reinforce a supported employment placement.

In response to public comment on the draft regulations, the Secretary proposes to amend the definition of the term ''physical and mental restoration service'' by deleting from the proposed definition certain services that are not specifically identified in the statute. For example, ''convalescent or nursing home care'' has been deleted since it is not specified in section 103(a)(4) of the Act and is viewed as a type of long-term care rather than a restoration service.

In response to public comment on the draft regulations, the Secretary proposes to amend the definition of the term ''physical or mental impairment'' to mean an injury, disease, or other condition that materially limits, or if not treated will result in materially limiting, mental or physical functioning.

The Secretary proposes to define ''post-employment services'' based on existing subregulatory guidance. In response to public comment on the draft regulations, the Secretary has amended the proposed definition to clarify that post-employment services are any vocational rehabilitation services for individuals that are provided subsequent to the achievement of an employment outcome and that are necessary to enable the individual to maintain, regain, or advance in employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests. In addition, the Secretary proposes to amend the note following the proposed definition in order to further explain the circumstances under which post-employment services may be provided.

In response to public comment on the draft regulations, the Secretary has amended the definition of the term ''substantial impediment to employment,'' as used in the criteria for determining eligibility under § 361.42(a)(1), to mean a physical or mental impairment that hinders (rather than ''prevents'') an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities. The Secretary proposes to delete the provision in the draft regulations that the impairment hinder the individual from employment that is consistent with the individual's interests. The purpose of this change is to clarify that an individual with an impairment who is not interested in his or her current employment does not, based on that lack of interest alone, have a substantial impediment to employment.

In response to public comment on the draft regulations and consistent with section 103(a)(14) of the Act, the

Secretary proposes to amend the definition of the term ''transition services'' to clarify that transition services must promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives identified in the transitioning student's IWRP.

In response to public commenters who sought further clarification of the term ''transitioning student'' in the draft regulations, the Secretary proposes to define the term to mean a student who is eligible to receive vocational rehabilitation services and is receiving ''transition services'' as defined in the regulations.

The Secretary proposes to define the term ''transportation'' on the basis of existing subregulatory guidance. In addition, the Secretary has included a note following the proposed definition that provides examples of permissible transportation expenses. One of these examples covers the short-term, travel-related expenses (i.e., food and shelter) of applicants receiving assessment services. These expenses, as discussed previously, cannot be provided under the maintenance authority. The Secretary also emphasizes that these examples are provided solely for the purposes of illustration and do not preclude DSUs from providing transportation costs in other appropriate situations.

Finally, the following nomenclature changes from the Act have been incorporated into the definitions and throughout the regulations: references to all forms of the word ''handicap'' have been changed to the corresponding form of the word ''disability;'' certain references to the word ''disability'' have been replaced by the word ''impairment'' (e.g., physical or mental impairment); and the word ''client'' has been removed and replaced with other appropriate terms, including ''applicant,'' ''eligible individual,'' ''individual,'' or ''individual with a disability.''

The Secretary also notes that proposed changes to supported employment definitions included in this NPRM would also affect those definitions in 34 CFR Parts 363, 376, and 380.

Section 361.10—Submission, Approval, and Disapproval of the State Plan

Proposed § 361.10 contains certain requirements from §§ 361.2 and 361.3 of the existing regulations relating to the purpose, duration, development, submission, and approval of the State plan. Many of the other requirements in §§ 361.2 and 361.3 of the existing regulations have been relocated to other sections of the proposed regulations because they deal with the substance and administration of the State plan. Proposed § 361.10 also incorporates the new statutory provision that authorizes the Secretary to approve the submission of a State plan for a period other than three years if it corresponds to the period required for another plan required under Federal law. Proposed paragraph (j) of this section provides the procedures for disapproval of the State plan. The procedural protections would be the same as those that are currently provided when the Secretary withholds funds.

Paragraphs (e) and (f) of § 361.2 of the existing regulations, which contain provisions regarding the designation of and transition to a new State agency or State unit, would be removed from the proposed regulations. The 1991 NPRM proposed removal of these requirements because of the paperwork burden, and they have been omitted in this NPRM for the same reason.

Section 361.11—Withholding of Funds

Proposed § 361.11 revises § 361.4 of the existing regulations to make withholding hearings under this program subject to the jurisdiction of and the procedural requirements governing the Department's Office of Administrative Law Judges in EDGAR, 34 CFR Part 81, rather than program specific hearing procedures in current §§ 361.170 through 361.186, which would be repealed. This is consistent with the changes proposed in the 1991 NPRM.

Section 361.12—Methods of Administration

This proposed section is taken from § 361.10 of the existing regulations. The proposed regulations add a clause to clarify that proper and efficient administration of the State plan includes procedures to ensure accurate data collection and financial accountability.

Section 361.13—State Agency for Administration

This proposed section consolidates information contained in §§ 361.5, 361.6, and 361.8 of the existing regulations regarding the designation of the State agency, the organizational level and status of the State unit, and the full-time director requirement.

In an effort to reduce the regulatory burden and increase State flexibility in accordance with the Department's principles for regulating, the Secretary proposes to delete the requirement in § 361.13(a)(1)(i) of the draft regulations and § 361.5(b)(1) of the current regulations that a designated State agency that has as its major function vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities also ''have the authority, subject to the supervision of the Governor, if appropriate, to define the scope of the program within the provisions of State and Federal law and to direct its administration without external administrative controls.'' Elimination of this non-statutory requirement, which applies currently to only one of the three sole State agency options identified in the regulations, is intended to increase State flexibility in locating and administering its vocational rehabilitation program.

Several commenters on the draft regulations requested clarification of the requirement in § 361.13(b)(1)(iii) that at least 90 percent of the State unit staff work full-time on the rehabilitation work of the organizational unit, which must be primarily concerned with vocational rehabilitation or vocational rehabilitation and other rehabilitation. This requirement means that if the organizational unit provides other rehabilitation services, in addition to vocational rehabilitation, the 90 percent staffing requirement applies to all unit staff providing rehabilitation services, not to just the vocational rehabilitation staff. ''Other rehabilitation'' includes, but is not limited to, other programs that provide medical, psychological, educational, or social services to individuals with disabilities. For example, a State unit with 90 percent of its staff working on independent living services, programs for the developmentally disabled, disabled children's services, services for individuals who are deaf or hearing-impaired, services for individuals who are blind or visually impaired, Social Security disability determinations, or some other type of program related to individuals with disabilities, in addition to vocational rehabilitation, would satisfy the 90 percent requirement. The Secretary also notes that Federal funds under this program may be used only to pay the salaries of the State unit staff that are working full-time or part-time on vocational rehabilitation.

In accordance with the Department's principles for regulating, the Secretary also proposes to delete the requirement in § 361.13(c) of the draft regulations and § 361.6(a) of the current regulations that the State plan describe the organizational structure of the State agency and its organizational units. The Secretary instead would rely on an assurance, required by statute, that a State agency that is required to have a vocational rehabilitation unit locate that

unit at an organizational level comparable to other organizational units within the State agency. This proposed change is intended to reduce paperwork burdens on State agencies in developing their State plans.

The Secretary is not proposing any substantive changes in paragraph (d) of this section to the requirements in current § 361.5(e) with regard to the responsibility of the designated State unit for administration of the vocational rehabilitation program, but is soliciting public comment on the need for changes.

The current regulations specify certain program functions or activities (determinations of eligibility, development of IWRPs, and decisions regarding the provision of services) that must be the responsibility of the DSU and that cannot be delegated to any other agency or individual. This non-delegation provision has been interpreted by RSA to mean that the DSU must carry out these functions or activities using its own staff. The draft proposed regulations, consistent with RSA subregulatory policy, specified additional program functions that must be carried out by the DSU: determinations that service recipients have achieved appropriate employment outcomes, the formulation and implementation of program policy, and the allocation and expenditure of program funds. The draft proposed regulations also would have strengthened the role of the State unit by requiring that the unit have a substantial role in all decisions affecting the administration of the VR program whenever management functions within the State agency are centralized.

Public comment on these draft proposed changes was neither extensive nor consistent. Some State VR directors supported a strengthening of the role and authority of the DSU but thought the draft proposed regulations were not strong enough, while other commenters thought the regulations were too prescriptive and believed that the only program function that must be carried out directly by DSU staff is eligibility determinations.

In light of the mixed public comment received thus far and the Administration's regulatory reinvention initiative, which is intended to increase State flexibility in administering Federally funded programs whenever permitted by statute, the Department is soliciting additional public comment on the following questions: Should the regulations expand or otherwise clarify essential program functions for which the DSU must be responsible in order to meet the statutory requirement in section 101(a)(2)(A) that it be responsible for the VR program? Must these essential program functions be carried out by DSU staff or should the regulations provide States as much flexibility as possible to determine how to carry out these functions as long as the DSU retains administrative oversight in these areas? Any changes made to provide increased flexibility to States would not require DSUs to change their current administrative practices but would provide States additional flexibility to restructure, consolidate, or contract out program operations as long as the DSU retains ultimate responsibility.

Section 361.14—Substitute State Agency

This proposed section revises certain requirements regarding the selection of a substitute State agency (§ 361.7 of the existing regulations) in order to simplify the process and reduce the paperwork burden. The existing regulations permit applications from a potentially unlimited number of substitute State agency applicants, from which the Secretary selects the substitute State agency based on detailed criteria in the existing regulations. The proposed regulations place the authority and responsibility for the selection of a substitute State agency on the State so that the Secretary would need only to review and approve a State plan from one substitute State agency prior to providing funds.

Section 361.15—Local Administration

This proposed section simplifies § 361.9 of the current regulations by removing the requirements related to a written agreement between a sole local agency and the State unit in order to reduce the paperwork burden on States. It proposes to replace the written agreement requirements with assurances from the State unit in the State plan relating to the administration and supervision of a sole local agency.

Section 361.16—Establishment of an Independent Commission or a State Rehabilitation Advisory Council

This proposed new section implements the new requirements related to the State Rehabilitation Advisory Council (Council) in section 101(a)(36) of the Act. The proposed section clarifies that a State does not need to establish a Council or meet the requirements related to a Council if the State agency is a consumer-controlled independent commission. The proposed section also clarifies that if the State has a separate State agency for individuals who are blind, four options regarding the possible combinations of the two State agencies exist. Although only three options are identified in the Act, the section-by-section analysis of the Act in the Conference Report clarifies that the fourth option, a mirror image of the third combination identified in the Act, is also acceptable. This option is contained in proposed paragraph (b)(4) of this section.

Section 361.17—Requirements for a State Rehabilitation Advisory Council

This proposed new section incorporates the new statutory requirements in section 105 of the Act with the clarification that the director of the DSU is a nonvoting member of the State Rehabilitation Advisory Council. Since the purpose of the Council is to advise the State unit, and the statute is clear that the director is an ex-officio member of the Council, the Secretary does not believe that Congress intended that the director of the State unit provide advice to herself or himself by voting on Council decisions. Similarly, the Secretary has clarified the regulations to state that any employee of the designated State agency may serve only as a nonvoting member of the Council.

Several commenters on the draft regulation sought clarification with respect to the appointment of Council representatives from the Client Assistance Program (CAP) and the Statewide Independent Living Council (SILC). In response, the Secretary proposes to amend the regulations to clarify that the role of the CAP and SILC is to recommend to the Governor, or other appropriate appointment authority designated by State law, Council representatives for their respective organizations. Based on these recommendations, the Governor or other State-designated authority determines who will be the Council appointees, since the statute clearly vests appointment authority in those entities. The Secretary also notes that those individuals recommended for Council membership by the CAP or SILC need not be CAP or SILC members.

In addition, in response to public comment on the draft regulations, the Secretary emphasizes that, although the Council must be composed of at least 13 members (unless the State qualifies for an exception under paragraph (b)(4) of this section), a State is not precluded from having more than 13 individuals serve on its Council.

The Secretary also encourages States to consider appointing Council members from minority backgrounds consistent with the 1992 Amendments to the Act, which emphasizes outreach

to individuals from minority backgrounds and the need for rehabilitation programs to better reflect the culturally diverse population of the United States.

Finally, in response to public comment on the draft regulations, the Secretary proposes to amend the annual reporting requirements of the Council by requiring the Council to submit to the Governor, or other appropriate State entity, and to the Secretary an annual report of the status of the State's vocational rehabilitation programs within 90, rather than 60, days from the end of the fiscal year and by requiring that the report be available through appropriate modes of communication.

Section 361.18—Comprehensive System of Personnel Development

This proposed new section incorporates the new statutory requirements in sections 101(a)(7) and 101(a)(35) of the Act. The requirements in section 101(a)(7) of the Act are virtually identical to requirements for a comprehensive system of personnel development under the Individuals with Disabilities Education Act (IDEA). For this reason, this section of the proposed regulations closely tracks the regulations implementing the IDEA requirements (34 CFR 300.380 through 300.383), with modifications to better reflect the context of the State Vocational Rehabilitation Services Program.

Some commenters on the draft regulations questioned the basis for requiring the involvement of the State Rehabilitation Advisory Council in the development of personnel standards. The Act requires that the Council generally advise the State unit in connection with the carrying out of its programmatic responsibilities. In addition, the State agency is required to consult, and seek advice from, the Council on issues affecting the development of the State plan. Because an effective system of personnel development is an essential part of the State plan and a critical element to the success of the State Vocational Rehabilitation Services Program, the Secretary considers it necessary for the Council to participate in the development of State personnel standards.

Paragraph (a) of this section requires that the State plan include, on an annual basis, a description of a system for collecting and analyzing personnel data. Several commenters on the draft regulations expressed concern about the amount of data that must be provided to the Secretary under this provision. In response, the Secretary emphasizes that, although annual data collection and analysis requirements are statutorily imposed, the proposed regulations require only that the State plan include a description of the system used to collect the data on personnel needs and personnel development and do not require the State to submit the actual data to the Secretary.

In response to public comment on the draft regulations, the Secretary proposes to broaden the definition of the term ''highest requirements in the State applicable to that profession or discipline,'' as used in the development and maintenance of personnel standards by the State, to mean the highest entry-level academic degree or equivalent experience needed to meet any national- or State-recognized certification, licensing, registration, or other comparable requirements that apply to a profession or discipline. The purpose of this change is to recognize that some States base their personnel standards, in part, on relevant work experience by substituting equivalent work experience for certain academic credentials. State standards of this type would meet this definition. This change, however, would not allow work experience to substitute for academic requirements if the existing State standard is based only on academic credentials.

The Secretary also believes that permitting States to base highest personnel standards in the State on equivalent experience, as well as on academic degrees, stresses the significance of relevant work experience and will diversify further the pool from which qualified personnel can be selected.

Several commenters on the draft regulations suggested areas of training in addition to rehabilitation technology that should be required in the regulations as part of the State's program of staff development. The Secretary believes that the specific training areas for staff development adopted by a State unit must be based on the particular needs of that State unit. The Secretary recognizes, however, that staff development may include, but is not limited to, training with respect to the requirements of the Americans with Disabilities Act, IDEA, and Social Security incentive programs, training to facilitate informed choice under this program, and training to improve the provision of services to culturally diverse populations. A provision to this effect has been added to the proposed regulations.

In response to public comment on the draft regulations, the Secretary proposes to change the reference in paragraph (e) of this section from ''special communication needs personnel'' to ''personnel to address individual communication needs'' and has clarified this provision by requiring the State unit to describe in the State plan how it includes among its personnel, or obtains the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability. That personnel may include State agency staff, family members of an applicant or eligible individual, community volunteers, and other individuals able to communicate in the appropriate native language. The State unit also must describe how it ensures that appropriate modes of communication are used for all applicants and eligible individuals.

In response to public comment on the draft regulations, the Secretary wishes to stress the importance of requiring in the State plan a description of the State's personnel performance evaluation system that facilitates, and does not impede, the purposes and policies of the vocational rehabilitation services program outlined in the Act. More precisely, the proposed regulations require that the evaluation system further the statutory policy of serving individuals with the most severe disabilities. In support of this requirement, the Senate Committee on Labor and Human Resources states in its report that it ''is concerned that in some States, procedures used for evaluating performance of counselors may have the unintended consequence of providing a disincentive to serve individuals with the most severe disabilities and those clients requiring complex services.'' The performance evaluation system required under the Act and included in the proposed regulations is designed to address these disincentives.

The Secretary proposes to modify paragraph (g) of this section to track section 101(a)(7)(A)(ii) of the Act, which requires the State agency to describe the activities it will undertake to coordinate its comprehensive system of personnel development with personnel development under IDEA. This proposed change is intended to increase the flexibility of State agencies to implement the most effective procedures for coordinating the development of personnel under both statutes. An example of how a State may address this coordination requirement would be to establish a joint continuing education program for both DSU personnel and personnel under IDEA that deals with the provision of VR services, including transition services, to transitioning students.

Section 361.19—Affirmative Action for Individuals With Disabilities

This proposed section, which is based on section 101(a)(6)(A) of the Act and § 361.15 of the existing regulations, requires the State agency to take affirmative action to employ and advance in employment qualified individuals with disabilities. In accordance with the Department's principles for regulating, the Secretary proposes to delete the non-statutory requirement in the draft regulations and the current regulations that the State unit develop an affirmative action plan that provides for specific goals, action steps, timetables, evaluation criteria for measuring progress, and complaint and enforcement procedures. By not requiring a formal affirmative action plan or specifying the minimum requirements a State must incorporate into that plan, the proposed provision would give State agencies greater flexibility to take those steps it considers most appropriate for increasing the number of qualified individuals with disabilities that it employs or advances in employment. The proposed changes also would reduce State paperwork burdens.

Section 361.20—State Plan Development

This proposed section revises § 361.18 of the existing regulations to implement new requirements in section 101(a)(23) of the Act.

Consistent with section 101(a)(23) of the Act, paragraph (a)(1) of this section of the regulations would require the State unit to conduct public meetings throughout the State to provide all segments of the public, including interested groups, organizations, and individuals, an opportunity to comment on the State plan prior to its development and to comment on any revisions to the State plan. In accordance with the Department's principles for regulating, the Secretary believes that States should have the latitude to develop their own procedures for ensuring that interested parties are afforded a meaningful opportunity to comment on the State plan before it is developed and when it is revised. Additionally, in order to satisfy the statutory requirement that the State unit, prior to conducting public meetings throughout the State, provide appropriate and sufficient notice of the public meetings, the proposed regulations would require the State unit to follow notice requirements established under State law or, in the absence of those requirements, to consult with the State Rehabilitation Advisory Council to develop notice procedures. The proposed regulations would not impose any specific minimum Federal requirements for what constitutes ''appropriate and sufficient notice.''

In response to those commenters who sought regulatory clarification of the public participation and notice requirements of this section, the Secretary provides the following examples as suggested ways a DSU might meet these requirements. A State unit could satisfy the public participation requirement, for example, by soliciting input from the public before developing a preliminary draft State plan and making the preliminary draft plan available to the public 30 days prior to the public meetings. An example of ''appropriate and sufficient notice'' of public meetings would be notice that is provided at least 30 days prior to a public meeting through various media available to the general public, such as newspapers and public service announcements, and through specific contacts with appropriate constituency groups and organizations identified by the State unit, in consultation with the State Rehabilitation Advisory Council. An example of how a State unit could meet the statutory requirement that it ''conduct public meetings throughout the State,'' would be to hold public meetings in at least two different geographic locations that are among the State's most densely populated areas and at sites that are accessible to individuals with disabilities.

Some commenters on the draft regulations suggested that larger States be required to hold a greater number of public meetings than smaller States, while other commenters suggested that States make use of emerging technologies that enable individuals to participate in public meetings without having to be in attendance. The Secretary encourages each State to hold as many public meetings as are necessary to ensure meaningful participation of all interested persons and organizations in that State. The Secretary also urges States to consider using alternative or emerging technologies that allow for wider public participation. The proposed regulations are intended to provide each State with the flexibility to choose the manner in which it conducts public meetings (e.g., in person, satellite broadcasts, teleconferences, or a combination thereof) as long as the meetings are truly interactive and are designed to maximize the opportunity for meaningful participation.

The proposed section also would implement the new statutory provision in section 105(c)(2) of the Act that requires the State Rehabilitation Advisory Council to advise the State unit on the preparation of the State plan by requiring the State unit to consult with the Council in the development of the State plan. Finally, the proposed section implements the new statutory requirement in section 101 (a)(32) of the Act that the State plan describe the manner in which it will modify State policy and procedures in response to consumer satisfaction surveys.

Section 361.21—Consultations Regarding the Administration of the State Plan

This proposed section is also taken from § 361.18 of the existing regulations. It incorporates section 101(a)(18) of the Act, including the new statutory requirement regarding consultation with the director of the CAP. It would also require consultation with the State Rehabilitation Advisory Council, consistent with the Council functions in new section 105(c) of the Act. It proposes to remove provisions in the existing regulations that list examples of matters of general policy development and implementation. Finally, this proposed section, as well as the previous section, would implement new section 101(a)(32) of the Act, which requires the State plan to describe the manner in which the State will modify State policy and procedures in response to consumer satisfaction surveys.

Section 361.22—Cooperation With Agencies Responsible for Transitioning Students

This proposed new section combines § 361.19(b) of the existing regulations, which requires the State plan to provide for the coordination of services for individuals who are eligible both for vocational rehabilitation services and for services under IDEA, with the new statutory provisions in sections 101(a)(11) and (a)(24) of the Act. The new statutory provisions require formal interagency agreements to facilitate the transfer of responsibilities for transitioning students who are receiving special education services from the agency responsible for providing a free appropriate public education to the State unit responsible for providing vocational rehabilitation services. In addition, proposed paragraph (b) of this section implements the new requirement in section 101(a)(30) of the Act regarding the availability of vocational rehabilitation services to students who are individuals with

disabilities and who are not in special education programs.

Some commenters on the draft regulations viewed the required content of formal interagency agreements between State units and State educational agencies as unduly burdensome. In response, the Secretary proposes to amend the regulations to require that formal interagency agreements need only identify provisions for determining State lead agencies and qualified personnel responsible for transition services, in addition to identifying those policies and practices that can be coordinated between the agencies, including eligibility standards, referral policies, outreach procedures, and evaluation procedures. The formal interagency agreement may, as appropriate, identify available resources, the financial responsibilities of each agency, dispute resolution procedures, and other cooperative policies.

Other commenters expressed concern that the draft regulations required State agencies to shoulder more of the responsibility for transitioning students than is contemplated under the Act. In response, the Secretary proposes to add a note in the regulations to clarify the roles of the rehabilitation and educational agencies in facilitating the transition of students who are eligible for VR services. As stated by the Senate Committee on Labor and Human Resources, the role of the State agency is primarily one of planning for the student's years after leaving school.

Section 361.23—Cooperation With Other Public Agencies

This proposed section is taken from paragraphs (a), (c), and (d) of § 361.19 of the existing regulations and has been revised to incorporate the new requirements in section 101(a)(11) of the Act regarding the content of formal interagency cooperative agreements. The proposed section is also reorganized to clarify that the long list of programs under existing § 361.19(a) refers to Federal, State, and local public programs and agencies providing services related to the rehabilitation of individuals with disabilities.

Section 361.24—Coordination With the Statewide Independent Living Council

This proposed new section incorporates the new requirement in section 101(a)(33) of the Act that the State unit coordinate and establish working relationships with the Statewide Independent Living Council and independent living centers within the State.

Section 361.25—Statewideness

This proposed new section contains the requirement in § 361.2(a) of the existing regulations that the State plan be in effect in all political subdivisions of the State.

Section 361.26—Waiver of Statewideness

This proposed section revises § 361.12 of the existing regulations to clarify that a waiver of statewideness is necessary if the State unit wants to provide through local financing increased services or an expanded scope of services that is different from the services available statewide. The procedural requirements relating to a request for a waiver would remain substantially the same.

Section 361.27—Shared Funding and Administration of Joint Programs

This proposed section revises § 361.11 of the existing regulations to clarify that these programs involve shared funding and administrative responsibility, that a request for the Secretary's approval must be included in the State plan, and that a request for waiver of statewideness also must be included in the State plan, if necessary. The proposed regulations would also remove the specific requirements relating to a written agreement that are in the existing regulations. The 1991 NPRM proposed to remove the written agreement requirements as part of the effort to reduce paperwork burden, and the requirements are omitted in this NPRM for the same reason.

Section 361.28—Third-Party Cooperative Arrangements Involving Funds From Other Agencies

This proposed section revises § 361.13 of the existing regulations to reduce the requirements related to third-party cooperative arrangements, including the requirements for a written agreement, an annual program budget, and an annual review of program operations. The proposed regulations would also clarify that applicants, as well as eligible individuals, can receive services under these cooperative arrangements. This section would be placed organizationally in the regulations next to the proposed section on shared funding and administration to emphasize the differences between joint programs and third-party cooperative arrangements.

Some commenters on the draft regulations suggested that third-party cooperative arrangements be jointly administered by the State unit and the cooperating agency, i.e., administered in the same way as joint programs under proposed § 361.27. In response, the Secretary notes that section 101(a)(2) of the Act requires the designated State unit to be responsible for the vocational rehabilitation program. Third-party cooperative arrangements provide a framework for cooperating agencies to provide vocational rehabilitation services and contribute to the State's non-Federal financial share under the program. Thus, third-party arrangements are considered part of the vocational rehabilitation program for which the State unit must retain administrative responsibility. In contrast, State units that are parties to joint programs share funding and administrative responsibility with other agencies.

In response to public comment on the draft regulations, the Secretary has clarified that services provided by the cooperating agency under a cooperative arrangement must either be new services that have a vocational rehabilitation focus or existing services that have been modified, adapted, expanded, or reconfigured to have a VR focus. These requirements are consistent with longstanding RSA subregulatory guidance.

Section 361.29—Statewide Studies and Evaluations

This proposed section revises and expands § 361.17 of the existing regulations to identify and clarify the timelines for all of the study and evaluation requirements, some of which are currently contained in other sections. It also expands the requirement in § 361.2(a)(2)(i) of existing regulations that the State plan describe changes in policy resulting from the statewide studies and the annual evaluation to also require a description of activities undertaken and changes in the State plan, the strategic plan, and plan amendments that result from the studies and evaluations. Proposed paragraph (d) of this section incorporates the new requirement in section 105(c)(2) of the Act regarding the role of the State Rehabilitation Advisory Council in the preparation of the statewide studies and evaluation.

Section 361.30—Services to Special Groups of Individuals With Disabilities

This proposed section combines §§ 361.37 and 361.38 of the existing regulations regarding special services for civil employees of the United States and for American Indians, along with paragraph (c) of § 361.36 of the existing regulations, which provides for special consideration for public safety officers. In addition, the Secretary proposes to clarify in this section that special consideration means that a public safety

officer would receive priority for services over other individuals in the same priority category of an order of selection. The proposed section would also incorporate the statutory definitions of ''criminal act'' and ''public safety officer'' from section 7 of the Act.

Section 361.31—Utilization of Community Resources

This proposed section is substantially the same as § 361.56 of the existing regulations. It has been relocated to group it with other utilization sections in the part of the regulations that contains general administration requirements, rather than in the part of the regulations that addresses provision of services requirements.

Section 361.32—Utilization of Profitmaking Organizations for On-The-Job Training in Connection With Selected Projects

This proposed section revises § 361.57 of the existing regulations to increase State unit flexibility by authorizing, rather than requiring, a State unit to use profitmaking organizations if it determines that those organizations are better qualified to provide needed services than nonprofit agencies, organizations, or facilities in the State.

Section 361.33—Utilization of Community Rehabilitation Programs

This proposed section revises §§ 361.21 and 361.22 of the existing regulations and replaces the term ''rehabilitation facilities'' with the term ''community rehabilitation programs,'' consistent with the 1992 Amendments. It also incorporates changes in the State plan requirements in sections 101(a)(5) and 101(a)(15) of the Act and new requirements in sections 101(a)(27) and 101(a)(28) of the Act.

In accordance with the Department's principles for regulating, the Secretary proposes to eliminate current non-statutory requirements for a rehabilitation facilities plan and for an inventory of community rehabilitation programs and requirements in the draft regulations for a justification in the State plan for using funds for the support of community rehabilitation programs, including the construction of facilities, and for a prioritized list in the State plan of proposed activities. The removal of these provisions would substantially reduce paperwork burdens on designated State units.

Section 361.34—Supported Employment Plan

This proposed new section incorporates sections 101(a)(25) and 635(a) of the Act, which require a State to assure that it has an acceptable plan for providing supported employment services and to submit that plan as a State plan supplement.

Section 361.35—Strategic Plan

This proposed new section would require that the strategic plan to expand and improve vocational rehabilitation services be provided as a supplement to the State plan. Section 101(a)(34)(A) of the Act requires the State plan to include an assurance that the State has a strategic plan to expand vocational rehabilitation services in accordance with Part C of Title I. In addition, section 120 of the Act requires States to submit their strategic plans to the Secretary prior to receiving funding under Part B of the Act, which includes the allotment for this program. The Secretary believes that requiring the strategic plan as a supplement to the State plan is the simplest and least burdensome approach.

Section 361.36—Reserved

This section is reserved for the order of selection regulations, which are being implemented in a separate rulemaking document.

Section 361.37—Establishment and Maintenance of Information and Referral Resources

The provision proposed in the draft regulations was substantially the same as § 361.20 of the existing regulations. However, commenters on both the draft regulations and the July 16, 1993 NPRM on order of selection have requested that State units operating under an order of selection be permitted to provide non-purchased services (e.g., information and referral) to eligible individuals who do not qualify for services under the State unit's priority categories. An order of selection is required under section 101(a)(5)(A) of the Act if a State unit determines that it is unable to provide services to all eligible individuals who apply for services. In response to public comment, the Secretary proposes to address this concern by amending the regulations to authorize any State unit that has implemented an order of selection to establish an expanded information and referral program that includes the provision of job referral services to eligible individuals who are not being served under a State unit's order of selection, provided that certain State plan requirements are met. These requirements include a description in the State plan of the level of commitment of staff and other resources for this purpose and an assurance that in carrying out this program, the State unit will not use case services funds that are needed to provide VR services to eligible individuals who are able to be served under the State unit's order of selection.

Section 361.38—Protection, Use, and Release of Personal Information

This proposed section is substantially the same as § 361.49 of the existing regulations with the clarification in proposed paragraph (e)(3) that a State unit is required to release personal information if required by Federal regulations or Federal law.

In addition, some commenters on the draft regulations expressed concern that the State unit could release harmful personal information to a representative not chosen by the applicant or eligible individual. In response, the Secretary has clarified that the State unit may release information that it determines to be harmful to the individual only to a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional.

In response to public comment on the draft regulations, the Secretary also proposes to amend the regulations by clarifying that State units shall release personal information in response to an ''order issued by a judicial officer.'' The Secretary believes that the use of the term ''judicial order'' in both the current and draft regulations is confusing and that the clarification is necessary to ensure that a judge, magistrate, or other authorized judicial officer appropriately weighs the factors necessitating release of personal information against the individual's rights to privacy and protection from unauthorized use before ordering a State unit to release the information.

In addition, the proposed section has been relocated to group it with other sections of the regulations that contain the administrative requirements since it does not relate to the provision and scope of services.

While the confidentiality of personal information from applicants and eligible individuals under this program is considered essential to protect individual privacy, the Secretary specifically requests public comment on whether the provisions of this section are unduly burdensome or inconsistent with State laws governing the protection, use, or release of personal information.

Section 361.39—State-Imposed Requirements

This proposed section is taken from § 361.25 of the existing regulations. The

draft regulations would have required State units to identify State-imposed requirements at the public meetings to develop and revise the State plan. In response to public comment, the Secretary proposes to clarify this section of the regulations by requiring State units to identify upon request those regulations and policies relating to the administration or operation of the vocational rehabilitation program that are State-imposed. In making these changes the Secretary recognizes that the scope of State-imposed requirements is broader than those included in the State plan and that the Act requires the application of any State rule or policy relating to the administration or operation of the vocational rehabilitation program to be identified as a State-imposed requirement. The proposed section would require State units to identify those requirements upon request, including, but not limited to, requests made at public meetings.

Section 361.40—Reports

This proposed section is substantially the same as § 361.23 of the current regulations, except that it would add cross-references to sections 13, 14, and 101(a)(10) of the Act to distinguish the reporting requirements under this section from the reporting requirements related to statewide studies and evaluations under proposed § 361.29.

Section 361.41—Processing Referrals and Applications

This section expands § 361.30 of the current regulations to incorporate the new statutory requirement in section 102(a)(5)(A) of the Act that an eligibility determination be made within 60 days of the date on which an application is submitted, with limited exceptions. The Secretary proposes to require the State unit to establish timelines for making good faith efforts to contact individuals who have been referred for services to minimize delay at the pre-application stage.

Under the draft regulations, an individual was considered to have ''submitted an application'' if the individual, or the individual's representative, as appropriate, had submitted a completed agency application or a signed written request for services. In an effort to ensure that agencies are provided with all information necessary to make eligibility determinations, some commenters on the draft regulations stated that completion of an agency application should be the sole method for requesting services. In contrast, other commenters supported the use of alternative methods for requesting services as a means of avoiding unnecessary delays if a particular application form was not used. In response, the Secretary proposes to clarify the regulations by interpreting the term ''submitted an application'' to include any request for services as long as the individual has provided information necessary for the DSU to initiate an assessment to determine eligibility and priority for services. Once an individual or the individual's representative, as appropriate, requests services, it is expected that State units will make good faith efforts to obtain this information as quickly as possible. For example, if a potential applicant has requested services in writing, the State unit may need to telephone the individual in order to obtain the necessary information in a timely manner. In addition, the proposed regulations require State units to make application forms readily available throughout the State.

Section 361.42—Assessment for Determining Eligibility and Priority for Services

This section combines §§ 361.31 and 361.32 of the existing regulations, which are the sections on eligibility and preliminary diagnostic study. The 1992 Amendments combined in the statute all of the evaluation steps that are currently required by those sections and by §§ 361.33 and 361.40 of the existing regulations into one assessment for determining eligibility and vocational rehabilitation needs, which is defined in section 7(22) of the Act. The Secretary proposes to divide that assessment into two steps in the regulations—an assessment for determining eligibility and priority for services, addressed in this section, and an assessment for determining vocational rehabilitation needs through the development of the IWRP, addressed by proposed § 361.45.

In response to public comment on the draft regulations, the Secretary proposes to amend this section by requiring that the assessment for determining eligibility and priority for services be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice.

Proposed paragraph (a) of this section incorporates the changes in the eligibility criteria that were made by the 1992 Amendments, including the presumption that an individual with an impairment that constitutes a substantial impediment to employment can benefit from vocational rehabilitation services, the presumption that Social Security beneficiaries meet the first two eligibility criteria, and the new requirement that an individual with a disability require vocational rehabilitation services in order to achieve an employment outcome consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

Some commenters questioned the absence of a regulatory provision identifying who is qualified to determine the existence of a physical or mental impairment. Section 361.32 of the existing regulations requires that the preliminary diagnostic study, for purposes of determining an individual's eligibility for services, must include medical information and, in the case of individuals with mental and emotional disorders, an examination by a physician or by a licensed or certified psychologist. Proposed paragraph (a)(1)(i) of this section is based on amendments to section 103(a) of the Act, which substituted the standard that ''qualified personnel in accordance with State licensure laws'' make these determinations in lieu of particular medical professionals. The proposed regulatory provision broadens this concept to also encompass individuals who are certified under State law and individuals licensed or certified under State regulations. The Secretary believes that this broader interpretation is necessary to ensure that existing data and determinations made by other agencies, particularly education agencies, are used by DSUs in determining whether an individual is an individual with a disability under section 7(8)(A) of the Act or an individual with a severe disability under section 7(15)(A) of the Act. Under the proposed regulations, the determination of who is qualified to determine the existence of an impairment will vary from State to State depending on State licensure and certification requirements. Although the proposed regulations do not require a medical diagnosis for a DSU to determine that an impairment exists, the Secretary anticipates that in most instances those determinations will be supported by medical documentation.

Paragraph (a)(2) of § 361.42 in the draft regulations required a DSU to presume that an applicant can benefit in terms of an employment outcome unless it determines, based on clear and convincing evidence, that the applicant is incapable of benefitting from VR services as a result of the severity of his or her disability. In response to public comment, the Secretary proposes to delete the phrase ''as a result of the severity of his or her disability'' from the NPRM in order to clarify that individuals may be found incapable of

benefitting from VR services for reasons other than severity of disability. This change is consistent with section 102(a)(4)(A) of the Act. Nevertheless, the Secretary expects that the overwhelming majority of determinations under this requirement will be based on the severity of the individual's disability and specifically requests public commenters to identify reasons other than severity of disability that would support a determination that an individual is incapable of benefitting from VR services. If a determination that an individual cannot benefit from VR services is based on the severity of the individual's disability, section 102(a)(4)(B) of the Act and proposed paragraph (d)(1) of this section would also require the DSU to conduct an extended evaluation before reaching this conclusion. Finally, the Secretary proposes to further amend paragraph (a)(2) of this section to clarify that the presumption of benefit applies only to those applicants who meet the first two eligibility criteria.

In response to public comment on paragraph (b)(1) of this section of the draft regulations, the Secretary proposes to amend the regulations to prohibit States from imposing any duration of residence requirement for the receipt of services on any applicant who is present, rather than resides, in the State. The amended provision closely tracks the statutory language of section 101(a)(14) of the Act.

Paragraph (c) of this section incorporates the new statutory provisions that require the State unit to use existing data, to the extent possible, to determine eligibility and vocational rehabilitation needs.

Some public commenters on the draft regulations inquired as to the scope of vocational rehabilitation services that DSUs must provide during an extended evaluation. In response, the Secretary proposes to amend the regulations to require the State unit to develop a written plan during the extended evaluation period for determining eligibility and for determining the nature and scope of services required to achieve an employment outcome. The provision of services under the plan must be limited to those services needed to make these two determinations. It should be noted that this change represents a departure from the current regulations, which required DSUs to develop an IWRP for individuals in extended evaluation. The Act, however, requires only that IWRPs be developed for eligible individuals. The written plan requirements of this section are, therefore, intended to lessen the burden on State units of developing IWRPS for individuals in an extended evaluation, while ensuring that the specific services to be provided during an extended evaluation are clearly identified.

The proposed regulations also contain a note on clear and convincing evidence that is based on legislative history from the Senate Committee Report. In response to public comment, the Secretary proposes to amend the note to clarify that determinations under the ''clear and convincing evidence'' standard must be made on a case-by-case basis.

Finally, the Secretary views the new eligibility criterion that an individual must require vocational rehabilitation services in order to achieve or retain an employment outcome as a limiting factor that is intended to screen out individuals who can prepare for, enter into, engage in, or retain gainful employment consistent with their strengths, resources, priorities, concerns, abilities, and capabilities without assistance from the vocational rehabilitation program. The proposed regulations contain a second note that provides several examples for guidance to State agencies regarding situations in which an individual may or may not require vocational rehabilitation services. The Secretary emphasizes that the examples are provided solely for the purposes of illustration, do not address all situations under which an individual may be eligible or ineligible for services, and are not intended to substitute for individual counselor judgment on a case-by-case basis.

Section 361.43—Procedures for Ineligibility Determination

The Secretary proposes this new section to consolidate overlapping provisions relating to procedures for ineligibility determinations that are currently contained in several different sections of the regulations. Specifically, it would consolidate paragraph (e) of current § 361.34, which contains termination provisions for an extended evaluation to determine rehabilitation potential, paragraph (c) of current § 361.35, which contains the requirements for a certification of ineligibility, and paragraph (d) of current § 361.40, which contains the requirements regarding review of ineligibility determinations.

The Secretary proposes to require DSUs to review all ineligibility determinations once within 12 months unless exceptions apply. In response to public comment on the draft regulations, the Secretary also proposes to amend paragraph (d) of this section to clarify that each year after the initial review, DSUs must, upon request, review any ineligibility determination that is based on the inability of the individual to achieve an employment outcome.

Section 361.44—Closure Without Eligibility Determination

The Secretary proposes to create this new section from the provisions contained in paragraph (e) of § 361.35 of the current regulations, which is the section that contains the certification requirements. Although the certification requirements have been removed from the proposed regulations because they overlap with the documentation requirements in the case record (referred to as record of services in proposed § 361.47), the substantive requirements related to closure without an eligibility determination are substantially the same as they are in existing § 361.35(e).

In response to public comment on the draft regulations, the Secretary has clarified the regulations to authorize the State unit to close an applicant's case if the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services. In either situation, the State unit is required to make a reasonable number of attempts to contact the individual or, if appropriate, the individual's representative prior to closing the applicant's case.

§ 361.45—Development of the Individualized Written Rehabilitation Program

In response to public comment, this section, entitled ''Assessment for determining vocational rehabilitation needs'' in the draft regulations, has been renamed for purposes of clarification. The Secretary believes this proposed retitling better reflects the full scope of requirements under the IWRP development process, of which the assessment represents an essential part. The Secretary also proposes to clarify the purpose clause under paragraph (a) of this section for the same reason.

This proposed section would combine the provisions in §§ 361.33 and 361.40 of the current regulations regarding thorough diagnostic study and IWRP procedures. It incorporates new statutory requirements created by the 1992 Amendments, including requirements regarding informed choice, integrated settings, and the use of existing data.

Some public commenters suggested that the term ''counseling and guidance'' be defined in the proposed regulations. The Secretary declines to define the term, but proposes to revise paragraph (b)(1) of this section to

emphasize the development of a counseling and guidance relationship between the vocational rehabilitation counselor and the individual during assessment. That relationship is intended as a means of fostering collaboration between the counselor and the individual in identifying, preparing for, and achieving meaningful vocational outcomes for the individual. The Secretary envisions that the counselor, based on his or her expertise, will provide the individual with comprehensive information relevant to the individual needs of the individual and that the counselor and individual will jointly discuss the values, needs, desires, and realities facing both individuals. It also should be noted that, in response to public comment, the Secretary has deleted the requirement in the draft regulations that counseling and guidance be provided throughout the development and implementation of the IWRP. As discussed in the following paragraph, IWRPs are developed on an individual basis, and while some individuals may request or require counseling and guidance services throughout the development and implementation of their IWRPs, others may not. By making this change, the Secretary emphasizes that the provision of counseling and guidance during the development and implementation of the IWRP is dependent on the particular circumstances affecting each individual.

Several commenters on the draft regulations were concerned that this section required State units to impose strict timelines for developing IWRPs without considering the particular needs of the individual. In response, the Secretary proposes to amend the regulations to require State units to establish and implement standards for the prompt development of IWRPs, including timelines that take individual needs into consideration. The Secretary agrees that the development of the IWRP is a highly individualized process and must be conducted in a manner consistent with the individual's strengths, priorities, concerns, abilities, capabilities, and career interests. Nevertheless, the Secretary believes that these timelines, which are not absolute and operate as guidelines, are consistent with the legislative intent that individuals with disabilities receive services as quickly as possible and, therefore, are necessary to guard against delays in the development of the IWRP once an individual is determined eligible for VR services.

Section 361.46—Content of the IWRP

This proposed section contains the IWRP content requirements, which are in § 361.41 of the existing regulations.

Several commenters on the draft regulations viewed certain requirements under this section and § 361.47 (Record of services) as duplicative of one another and, therefore, unduly burdensome. In response, the Secretary proposes to reduce the paperwork requirements in each section of the regulations by eliminating certain requirements that are non-statutory or redundant. The Secretary emphasizes, however, that the elimination of certain documentation requirements in these sections is intended solely as a means of reducing paperwork burdens on the State unit and does not diminish the responsibility of the State unit to fully develop the IWRP and to be able to document or otherwise support its determinations affecting each individual should those determinations be questioned within the context of a compliance review or audit. Each IWRP content or record of services requirement eliminated from the draft regulations is, the Secretary believes, sufficiently addressed elsewhere in the regulations.

For example, the Secretary proposes to delete the requirement that the IWRP include statements supporting the basis on which individuals are determined eligible or ineligible for services. The Secretary agrees that those statements are burdensome given comparable case record requirements in proposed § 361.47 (a) and (b) that the State unit maintain documentation supporting determinations of eligibility and ineligibility.

In paragraph (c) of this section, the Secretary proposes to clarify the regulations by consolidating the IWRP content requirements that relate to post-employment services.

Some public commenters on the draft regulations suggested that the State unit attach the Individualized Education Plan (IEP) to the IWRP, rather than summarize the IEP, when coordinating with education agencies to serve transitioning students. In response, the Secretary emphasizes that the Secretary does not consider coordination between the IWRP and IEP to represent a documentation requirement. Rather, the requirement in the draft regulations that the IWRP include a summary of the transitioning student's IEP was intended to ensure that the State unit review the vocational goals, rehabilitation objectives, and nature and scope of services identified in the transitioning student's IEP during the course of developing the IWRP. Requiring that review is consistent with the legislative intent that State units coordinate with education agencies to serve transitioning students in the most effective and efficient manner possible. In an effort to clarify the regulations, however, the Secretary proposes to amend this section to require the State unit to ensure that the transitioning student's IWRP is consistent with the student's IEP in terms of goals, objectives, and services. Although the IWRP need not include a summary or an attached copy of the IEP, it is expected that, for transitioning students, State units will closely review the IEP in the course of IWRP development. In addition, the Secretary proposes to amend § 361.47(f) to require the State unit to maintain documentation from the needs assessment to support the goals, objectives, and services identified in the IWRP and in the IEP of transitioning students.

Finally, in response to public comment, the Secretary proposes to add paragraph (e) to this section to require State units to ensure that a determination that an individual is ineligible for services after an IWRP has been developed is made in accordance with the procedures in proposed § 361.43 and is included as an amendment to the IWRP.

Section 361.47—Record of Services

This proposed section revises § 361.39 of the existing regulations. References to the ''case record'' would be replaced with the term ''record of services'' to discourage characterizing individuals with disabilities as ''cases.'' The proposed section would incorporate the choice and integration requirements in the 1992 Amendments.

As previously discussed, the Secretary has significantly revised this section to reduce paperwork requirements in response to commenters on the draft regulations who viewed many of the record of services requirements as unduly burdensome or duplicative of other requirements in the regulations.

In response to public comment, the Secretary proposes to simplify paragraphs (a) and (b) of this section to require State units to maintain documentation to support determinations of eligibility or non-eligibility made in accordance with proposed § 361.42 or § 361.43. The Secretary also proposes to require State units to include, as part of an individual's record, documentation supporting the determination that an individual has a severe or most severe disability. This requirement is

particularly important to support an individual's receipt of services from a State unit operating under an order of selection or to support the individual's placement in a supported employment setting. In addition, this requirement is consistent with the intent of the Act to expand and improve services to individuals with the most severe disabilities.

In paragraph (d) of this section, the Secretary proposes to simplify the requirements relating to extended evaluations by requiring State units to maintain documentation to support the need for an extended evaluation and to support the periodic assessments conducted during the extended evaluation. Documentation maintained under this paragraph would also include the written plan developed during the extended evaluation in accordance with § 361.42(d)(3).

In an effort to better coordinate rehabilitation services for transitioning students, the Secretary also proposes to amend paragraph (f) of this section to specify that the State unit must document the development of the individual's long-term vocational goal, intermediate rehabilitation objectives, and nature and scope of services, as identified in the transitioning student's IWRP and IEP.

Finally, the Secretary proposes to delete a number of requirements from the draft regulations on the basis that the requirements are unduly burdensome or unnecessarily duplicative of other provisions in the regulations. For example, because the IWRP is included as part of the individual's record of services that must be maintained under this section, requirements that are duplicative of IWRP content requirements in proposed § 361.46 have been deleted from the record of services. For each record of services requirement that the Secretary considers duplicative of other requirements in the regulations, specific references to those other requirements are provided.

Accordingly, the Secretary proposes to delete the following documentation requirements from this section of the draft regulations: (1) Documentation of the manner in which the individual was provided information necessary to make informed choices as to vocational goals, rehabilitation services, and service providers (addressed by § 361.46(a)(6) and § 361.52). (2) Documentation of the manner in which the individual was provided information regarding the level of integration of service provision and job placement options (addressed by § 361.46(a)(7)(iii) and § 361.52). (3) Documentation supporting the determination that the clinical status of the individual is stable or slowly progressive if physical and mental restoration services are provided (addressed by § 361.46(a)(3)). (4) Documentation to support any decision to provide services to family members (addressed by § 361.46(a)(3)). (5) Documentation relating to the individual's participation in the cost of any vocational rehabilitation services, the eligibility of the individual for any comparable services and benefits, and the availability and use of those comparable service and benefits (addressed by § 361.46(a)(7)). (6) Documentation that the individual has been advised of the confidentiality of all information pertaining to the individual and that any information about the individual has been released with the individual's informed written consent (addressed by § 361.46(a)(7) and § 361.38). (7) Documentation of any plans to provide post-employment services after the employment outcome has been achieved (addressed by § 361.46(c)). (8) Documentation of any review of the determination that an individual is no longer capable of achieving an employment outcome after services under an IWRP have already been provided (addressed by § 361.43(d)).

The Secretary is particularly interested in public comment on whether the proposed provisions cover all key decision points in the rehabilitation process for which documentation is needed.

Section 361.48—Scope of Vocational Rehabilitation Services for Individuals With Disabilities

This proposed section revises § 361.42 of the existing regulations.

The phrase ''counseling and guidance'' in the current regulations has been changed in proposed § 361.48(a)(3) to ''vocational counseling and guidance'' in order to clarify that counseling and guidance services that are provided as discrete vocational rehabilitation services are vocational in nature and specifically designed to assist the individual in reaching an employment outcome. Vocational counseling and guidance is, therefore, distinguishable from the more generalized counseling and guidance that an individual may need at any point during the rehabilitation process in connection with the provision of services.

A number of paragraphs from the current regulatory section have been revised to remove definitional text, and definitions for those services have been added to proposed § 361.5. For example, proposed § 361.48(a)(5), providing for physical and mental restoration services, has been revised to remove all definitional material, which is now in proposed § 361.5(b)(35). Proposed paragraph (a)(7) of this section, providing for maintenance, has been modified to remove the current regulatory provisions that describe maintenance in terms of subsistence or basic living expenses, and a proposed definition of maintenance has been included in proposed § 361.5(b)(31) to clarify that maintenance costs are those expenses that are in excess of normal living expenses and that are necessitated by participation in a vocational rehabilitation program. Similarly, proposed paragraph (a)(8) of this section provides for transportation in connection with the rendering of any vocational rehabilitation service, and a definition of transportation has been added to proposed § 361.5(b)(49), which clarifies that transportation must be necessary to enable an applicant or eligible individual to participate in a program of vocational rehabilitation services. This change was proposed in the 1991 NPRM.

Proposed paragraph (a)(9) of this section clarifies that the services available to family members are vocational rehabilitation services necessary to enable the applicant or eligible individual to achieve an employment outcome.

Some commenters on the draft regulations requested that the provision of ''note-taking services'' not be limited to individuals who are deaf or blind. In response, the Secretary agrees that note-taking services should be available to any eligible individual in need of those services to achieve an employment outcome. Therefore, the Secretary proposes to delete ''note-taking'' from proposed paragraphs (a)(10) and (a)(11) of this section and emphasizes that these services are available under proposed paragraph (a)(20) of this section as ''other services'' whenever necessary for an eligible individual to achieve an employment outcome.

Proposed paragraph (a)(13) of this section, which provides for job search, placement assistance, and job retention services, clarifies the scope of services currently available under existing paragraph (a)(12) of § 361.42, which provides for placement in suitable employment. Proposed paragraphs (a)(14) and (a)(15) of this section incorporate new requirements in the statute for supported employment and personal assistance services. Proposed paragraph (a)(16) of this section revises the paragraph in the existing regulations on post-employment services by

referring to the proposed definition of post-employment services in § 361.5(b)(37). That definition incorporates the language in the 1992 Amendments regarding advancement in employment and individual choice. Finally, proposed paragraph (a)(18) of this section revises the paragraph in the existing regulations on rehabilitation engineering services, consistent with the 1992 Amendments, to provide for rehabilitation technology services.

Section 361.49—Scope of Vocational Rehabilitation Services for Groups of Individuals With Disabilities

This proposed section would consolidate provisions from several sections of the existing regulations, including the definition of vocational rehabilitation services for the benefit of groups of individuals in § 361.1(c) of the existing regulations and §§ 361.50, 361.51, 361.52, and 361.53 of the existing regulations. In addition, it would incorporate new requirements imposed by the 1992 Amendments, such as replacing the concept of the ''establishment of a rehabilitation facility'' with the concept of the ''establishment, development, or improvement of a public or other nonprofit community rehabilitation program,'' restricting the construction of a rehabilitation facility to special circumstances, and adding the newly authorized service of technical assistance and support services for businesses that are not subject to the Americans with Disabilities Act and are seeking to employ individuals with disabilities.

In response to public comment on the draft regulations, the Secretary proposes to amend paragraph (a)(5) of this section to clarify that the establishment of small business enterprises operated by individuals with the most severe disabilities under the State unit's supervision includes vending facilities established under the Randolph-Sheppard program. In addition, the Secretary proposes to amend this paragraph to clarify that management services and supervision in support of a small business enterprise may be provided by the State unit beyond the initial establishment period of six months. The Secretary also proposes to clarify the draft regulations to state that initial stock and supplies and operational costs for small business enterprises may be provided only during the initial six-month establishment period. These changes are consistent with section 103(b)(1) of the Act, as well as with the Randolph-Sheppard Act and its implementing regulations in 34 CFR Part 395.

Section 361.50—Written Policies Governing the Provision of Services

This section contains material from paragraph (b) of § 361.42 of the existing regulations, which requires written State policies on the scope of vocational rehabilitation services for individuals, and § 361.44 of the existing regulations, which is the section on authorization of services. The Secretary proposes to require that a State unit have policies regarding the provision of services for groups of individuals with disabilities, as well as the availability of services for individuals with disabilities.

In the draft regulations, this proposed section incorporated new provisions, based on existing policy and subregulatory guidance, to clarify that no absolute caps or limits, in terms of location, cost, or duration, could be placed on the availability of services that would effectively deny an individual a necessary service. Although these provisions are maintained in the proposed regulations, some public commenters were concerned that insufficient emphasis was placed on the requirement that policies governing the provision of services must be designed to meet the rehabilitation needs of each individual served by the State unit. In response, the Secretary proposes to amend the regulations to specify that the policies required to be developed under this section must ensure that the provision of services is based on the individual's rehabilitation needs as identified in the IWRP. As in the draft regulations, the proposed section would also prohibit State units from arbitrarily limiting the nature or scope of vocational rehabilitation services needed by any eligible individual to achieve an employment outcome.

Some commenters on the draft regulations opposed the ability of State units to establish preferences for in-State services on the basis that those preferences are inconsistent with principles of individual choice. In response, the Secretary proposes to amend the regulations to permit individuals to choose out-of-State services over in-State services. However, if an individual selects an out-of-State service at a higher cost than an in-State service, if either service would meet the individual's rehabilitation needs, the designated State unit would be required to pay only an amount equal to the cost of the in-State service.

The draft regulations would have required State units to provide written authorization of services either before or at the same time as the purchase of services, except in emergency situations when oral authorization, followed by prompt written confirmation, was permitted. In response to those commenters on the draft regulations who believed that the State unit should have greater flexibility in developing policies governing the authorization of services to individuals, the Secretary proposes to simplify the regulations to require State units to establish policies related to the timely authorization of services, including conditions under which verbal authorization can be given.

Section 361.51—Written Standards for Facilities and Providers of Services

This proposed section would incorporate § 361.45 of the existing regulations, would expand the requirement for standards to ensure accessibility of facilities, and would require new standards regarding qualified personnel and fraud, waste, and abuse, consistent with the 1992 Amendments.

In response to public comment on the draft regulations, the Secretary interprets the accessibility of facilities requirement broadly so as not to prevent any individual with a disability, including the multi-chemically disabled, from receiving services at a facility. In response to public comment, the Secretary also proposes to amend the qualified personnel requirements in paragraph (b)(1) of this section to reflect the personnel standards included in the State agency's comprehensive system of personnel development under section 361.18(c).

Section 361.52—Opportunity To Make Informed Choices Regarding the Selection of Services and Providers

This proposed new section would implement section 12(e)(1) of the Act, which was added by the 1992 Amendments and requires the Secretary to promulgate regulations establishing criteria pertaining to the selection of vocational rehabilitation services and providers by an individual with a disability.

In response to public comment on the draft regulations, the Secretary proposes to amend this section of the regulations to clarify that the concept of informed choice applies to all aspects of the vocational rehabilitation process, including the selection of vocational goals, intermediate objectives, VR services, and service providers. This provision is closely related to the requirement in proposed § 361.46(a)(6) that the IWRP include a statement from the individual describing the manner in which the individual exercised informed choice in selecting among

alternative goals, objectives, services, providers, and methods used to procure or provide services. The proposed regulations also would require that the State unit consult with its State Rehabilitation Advisory Council, if it has one, when developing its policies for facilitating informed choice.

Several commenters opposed the requirement in the draft regulations that State units develop indicators regarding the quality of service providers on the basis that such a requirement is overly burdensome and likely to lead to disputes, and potentially litigation, between State units and providers of VR services. In response, the Secretary proposes to amend the regulations to require State units to provide individuals, or assist individuals in acquiring, information necessary to make an informed choice about the specific services, including the providers of those services, that are needed to achieve the individual's vocational goal. Thus, it is expected that State units will provide, or facilitate access to, information concerning cost and accessibility of services, level of consumer satisfaction with services, qualifications of service providers, and other information necessary to enable the individual to make an informed choice among alternative services and providers.

It should also be noted that in response to public comment and in the interest of reducing the burden on State units, the proposed regulations would not require DSUs to provide a list of available services and the potential providers of those services to each individual. Lists of this type, as well as resource materials such as consumer satisfaction surveys, are, however, included in the regulations as examples of possible sources of information that may be used by DSUs to satisfy the information requirements of this section.

Section 361.53—Availability of Comparable Services and Benefits

This proposed section revises § 361.47(b) of the existing regulations.

As provided for in the draft regulations, the availability of comparable services and benefits is based on whether services and benefits exist under another program for the individual and whether the individual is eligible for those services or benefits. However, the use of comparable services and benefits under the draft regulations was dependent upon whether the comparable services and benefits were ''currently available'' to the individual. In response to public commenters who expressed confusion as to the meaning of this phrase, the Secretary proposes to delete the word ''currently'' from this section and to amend the regulations to require DSUs to use comparable services and benefits if available to the eligible individual within a reasonable period of time that is appropriate for the achievement of the intermediate rehabilitation objectives identified in the individual's IWRP. What constitutes a reasonable period of time would vary according to the services identified in each individual's IWRP. By making this change, the Secretary emphasizes that the use of comparable services and benefits should not unreasonably delay the individual in meeting his or her rehabilitation objectives.

In the event comparable services and benefits exist but are not available to the individual within a reasonable period of time, the proposed regulations would require the State unit to provide VR services during the interim period until they become available. In an effort to respond to public comment and reduce the burden on DSUs, the Secretary proposes to delete the requirement in the draft regulations that State units obtain reimbursement for any overlap in benefits once the comparable services and benefits become available.

In response to public comment on the draft regulations, the Secretary also proposes to revise the regulations to clarify that a determination as to the availability of comparable services and benefits is not required in connection with the provision of those services listed under paragraph (b) of this section. Although DSUs are free to provide these services without pursuing the availability of comparable services and benefits, the Secretary encourages State units to use known comparable services and benefits whenever possible in order to maximize the use of funds provided under this program.

In response to public comment on the draft regulations, the Secretary also proposes to amend paragraph (b) of this section by including taped texts and computer accessible formats (sometimes referred to as E-text) among those services for which comparable services and benefits do not need to be sought. This addition is consistent with the Act's legislative history, specifically Conference Report No. 102–973.

Section 361.54—Participation of Individuals in Cost of Services Based on Financial Need

This proposed section is taken from § 361.47(a) of the existing regulations. It would clarify the requirements that a State unit must meet if it chooses to consider the financial need of individuals to determine the extent of their participation in the cost of vocational rehabilitation services. The Secretary proposes to clarify the draft regulations to require State units to ensure that its policies governing financial need be applied uniformly to all individuals in similar circumstances. The Secretary interprets this provision, which is modeled after existing regulations, to require a State unit to apply its financial needs test to each individual in need of a service covered by the test without regard to the type of the individual's disability. The proposed regulations would also clarify that this uniform application requirement does not prohibit setting different levels of need for different geographic regions in the State, but requires uniform application of the standard to all individuals within each geographic region or to all individuals within the State if the State unit does not establish geographical differentials. Finally, the proposed regulations would clarify that the level of an individual's financial participation in the cost of VR services must be reasonable, based on the individual's financial need and ability to pay, and must not be so high as to effectively deny the individual a necessary service.

Section 361.55—Review of Extended Employment in Community Rehabilitation Programs or Other Employment Under Section 14(c) of the Fair Labor Standards Act

This proposed section is taken, in part, from § 361.58 of the existing regulations. In addition to the review of extended employment outcomes, the 1992 Amendments require the review of employment outcomes in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act to determine the individual's needs and interests related to competitive employment. This section would also incorporate the emphasis in the 1992 Amendments on employment and training in integrated settings and would elaborate on the meaning of the ''maximum effort'' required of State units in the existing regulations to clarify that State units are required to provide services to promote movement from extended employment to integrated employment.

Section 361.56—Individuals Determined To Have Achieved an Employment Outcome

This proposed section, which has been renamed to conform to the changes discussed in the following paragraphs, is taken from § 361.43 of the existing regulations. It has been revised to make the requirements in the current

regulations more outcome-oriented, rather than process-oriented, and to incorporate the new statutory emphases on choice and integrated settings.

In an effort to better reflect whether an individual has successfully achieved an employment outcome, the draft regulations would have extended the period for which an employment outcome must be maintained from 60 to 180 days. Several commenters, however, opposed the 180-day standard as unduly burdensome and inconsistent with individual choice. Some commenters believed that the standard for closing an individual's case should be based on the particular circumstances of the individual's employment situation, while others indicated that the determination as to whether the individual is successfully employed should be made jointly by the individual, the rehabilitation counselor or coordinator, and, in some cases, the employer. In response to these comments and to the views expressed by members of the focus group that discussed this issue, the Secretary proposes to delete the draft requirement that an employment outcome must be maintained for 180 days. In its place, the Secretary proposes a standard under which the individual must maintain the employment outcome for the duration of any probationary period that the employer has established for its employees, or, if the employer does not have an established probationary period, for a period of at least 90 days. In addition, the individual and the rehabilitation counselor or coordinator must agree that the employment outcome is satisfactory and that the individual is performing well on the job. Like the draft regulations, this section would also require the State unit to assure that the employment outcome is in the most integrated setting possible and is consistent with the individual's abilities, capabilities, interests, and informed choice. Finally, in response to public comment, the Secretary proposes to amend this section to require that the provision of services under the individual's IWRP contribute to, rather than result in, the achievement of the employment outcome.

The proposed standard, like that in the draft regulations, is intended to strengthen the current minimum 60-day standard for maintaining a job placement in an effort to better reflect whether an individual has, in fact, successfully achieved an employment outcome. The Secretary agrees with those commenters who suggested that achievement of an employment outcome should be based, in part, on the stability of the individual's employment. In addition, the proposed changes from the current regulations are also intended to condition the achievement of an employment outcome on the satisfaction of the individual, the counselor, and the employer. The Secretary believes that the best measure of an employer's satisfaction with an individual's job performance is whether the individual has met the employer's probationary period. For those individuals whose employers have not established a customary probationary period, the Secretary views the 90-day minimum as an adequate safeguard to ensure that the individual is performing well and is likely to maintain the employment outcome. Consistent with the Act's emphasis on informed choice, the proposed regulations would also base the decision that an individual has achieved an employment outcome on the individual's, as well as the counselor's or coordinator's, satisfaction with the employment outcome. The Secretary emphasizes that a satisfactory employment outcome, at a minimum, must meet the provisions of this section, and the Secretary is particularly interested in public comment concerning whether further standards for defining ''satisfactory'' should be developed at the Federal level.

The Secretary is continuing to consider issues concerning outcome measures for the vocational rehabilitation program, including the proposed time standard in these regulations for maintaining a job placement in order to achieve an employment outcome (the duration of the employer's probationary period or, in the absence of an employer policy in this area, at least 90 days). The Secretary believes that the high level of Federal funding for this program—over 78 percent—warrants close attention to accountability measures to ensure that employment outcomes are maintained over time. The Secretary is particularly interested in receiving comments on whether the proposed job retention standard is strong enough to achieve this result.

The Secretary is also interested in receiving comments about the relationship between closure requirements for the vocational rehabilitation program and other programs, including those under the Job Training Partnership Act (13 weeks), the Social Security beneficiary rehabilitation program (9 months of substantial gainful activity), and other State manpower development and job training programs. Finally, the Secretary is interested in comments on the impact of the proposed new employment outcome standard and whether, in comparison to the current standard, it would likely increase or decrease the number of individuals with disabilities achieving long-term employment outcomes.

Section 361.57—Review of Rehabilitation Counselor and Coordinator Determinations

This proposed section is taken from § 361.48 of the existing regulations.

In accordance with the Department's principles for regulating, the Secretary proposes to delete all non-statutory timelines from this section of the draft regulations. In place of specific time limits, the proposed regulations would require each DSU, in consultation with its State Rehabilitation Advisory Council, if it has one, to develop reasonable timelines for key stages of the appeal process to ensure that appeals are handled promptly. Specifically, DSU's would be required to develop timelines to ensure that hearings are held within a reasonable time after an individual's request for review, that the initial decision of the impartial hearing officer is rendered within a reasonable time after the hearing is completed, and that the final decision of the DSU director is rendered within a reasonable time after notifying the individual of the director's intent to review the initial decision. These changes are intended to provide DSU's with increased flexibility to develop appropriate timelines, while protecting individuals against unreasonable delays in the review process. Like the current regulations, this proposed provision also would permit a DSU to establish an informal process to resolve a request for review without conducting a formal hearing, but would require the DSU to conduct a hearing within the relevant State-developed timeline if informal resolution is unsuccessful. The Secretary particularly requests public comment on whether a specific overall time limit for completing the entire formal review process (e.g., 125 days) should be required under the regulations.

This section would incorporate the requirement in the 1992 Amendments that prohibits the State unit from instituting a suspension, reduction, or termination of services pending a final State hearing determination unless the agency has evidence that the services were obtained through fraud, misrepresentation, collusion, or criminal conduct on the part of the individual, or the individual so requests. The Secretary interprets this provision to mean that services may be suspended, reduced, or terminated

pending a final determination if there is ''substantial evidence'' of that conduct.

This proposed section also incorporates the requirement in the 1992 Amendments that the director not overturn or modify the decision of an impartial hearing officer unless the director concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous because it is ''contrary to Federal or State law, including policy.'' The Secretary interprets this statutory language to include a decision that is contrary to the approved State plan, the Act, or Federal or State vocational rehabilitation regulations or policy.

It should be noted that the Secretary has changed the term ''calendar day'' from the draft regulations to ''day'' in the proposed regulations in response to public commenters who inquired as to the difference in meaning between the two terms. Procedural time limits in this section and throughout the regulations are, therefore, measured in terms of ''days,'' which the Secretary intends to mean ''calendar days'' rather than ''working days.''

Finally, in response to public comment on the draft regulations, the Secretary proposes to add to paragraph (f) of this section a requirement that the DSU inform applicants and eligible individuals of the manner in which it selects impartial hearing officers.

Section 361.60—Matching Requirements

This proposed new section would clarify the matching requirements by consolidating all of the Federal and non-Federal share provisions. Proposed paragraph (a) of this section contains the general Federal share provision, which is in § 361.86(a) of the existing regulations and was revised by the 1992 Amendments to be 78.7 percent. Proposed paragraph (a) of this section also contains the 50 percent Federal share provision for construction projects, which is in § 361.74(b) of the existing regulations, and the 90 percent Federal share provision for innovation and expansion grant activities, which is addressed in § 361.153 of the existing regulations.

In accordance with the Department's principles for regulating, the Secretary proposes to simplify the requirements relating to the non-Federal share in the draft regulations by removing from the regulations a list of permissible sources of expenditures to meet the non-Federal share and instead cross-referencing the applicability of the matching or cost sharing requirements in 34 CFR 80.24 of EDGAR with certain exceptions. The proposed regulations would specify that third party in-kind contributions, which are a permissible source of matching funds under EDGAR, may not be used as part of the non-Federal share under the VR program. In addition, the proposed regulations would continue, but clarify, existing regulatory requirements that prohibit earmarked donations that benefit the donor from being used to meet the non-Federal share. The Secretary wishes to emphasize that the changes proposed with regard to meeting the non-Federal share would not prohibit the use of any funding sources that are currently allowable.

Section 361.61—Limitation on Use of Funds for Construction Expenditures

This proposed new section sets out in a separate section the requirement in paragraph (d) of § 361.85 of the existing regulations that no more than 10 percent of a State's allotment may be used for construction.

Section 361.62—Maintenance of Effort Requirements

This proposed section is taken from § 361.86 of the existing regulations. It incorporates provisions in the 1992 Amendments, which changed the standard on which the maintenance of effort level is based from the average of the three prior fiscal years to the second prior fiscal year. It also folds into the same section a separate maintenance of effort requirement relating to the construction of facilities that is contained in both § 361.52(e) and § 361.85(d) of the existing regulations. This proposed section clarifies the procedures the Secretary follows for determining whether maintenance of effort requirements have been met and for reducing the amount payable in the case of a maintenance of effort deficit if there is a separate State agency for vocational rehabilitation services for individuals who are blind.

Section 361.63—Program Income

This proposed new section consolidates in one place all of the provisions related to program income. Proposed paragraph (a) of this section incorporates the definition of program income from EDGAR (34 CFR 80.25(b)). Proposed paragraph (b) of this section incorporates existing subregulatory guidance regarding the sources of program income. Proposed paragraph (c)(1) of this section incorporates the general EDGAR requirement that program income must be used in the program in which it is earned, but makes an exception for Social Security reimbursements as provided in section 108 of the Act. Proposed paragraph (c)(1) of this section would clarify that program income is considered earned when it is received.

In response to public comment on the draft regulations, the Secretary proposes to delete from proposed paragraph (c)(3)(ii) of this section the requirement that the State notify the Secretary prior to using the deduction method for accounting for program income. By removing this condition, the Secretary emphasizes that the State is free either to use program income to expand its vocational rehabilitation program or to deduct it from its total allowable costs, without seeking prior Federal approval.

Proposed paragraph (c)(4) of this section would clarify that program income may not be used to meet the non-Federal share requirement.

Section 361.64—Obligation of Federal Funds and Program Income

This proposed new section incorporates the amendment to section 19 of the Act, which clarifies that both Federal funds, including reallotted funds, and program income from all sources may be carried over for obligation from the year in which the funds are received until the end of the following year.

In response to public comments on the draft regulations, the Secretary proposes to amend paragraph (b) of this section to clarify that the State unit may carry over any portion of unobligated Federal funds that it has matched by obligating non-Federal funds during the fiscal year for which the Federal funds were appropriated. This clarification is consistent with section 19 of the Act, which allows for carryover of Federal funds ''to the extent'' that recipients comply with Federal share requirements.

Section 361.65—Allotment and Payment of Federal Funds for Vocational Rehabilitation Services

This proposed section is taken from §§ 361.85 and 361.87 of the existing regulations.

Section 361.70—Purpose of the Strategic Plan

This proposed section implements new section 120 of the Act, which makes grants under Part B of the Act, as well as innovation and expansion grants under Part C of the Act, contingent on the preparation and submission of a statewide strategic plan.

Section 361.71—Procedures for Developing the Strategic Plan

This proposed new section implements new section 122 of the Act, which requires the State to hold public forums and meet with members of the

State Rehabilitation Advisory Council and the Statewide Independent Living Council prior to developing the strategic plan. The Secretary interprets the public forum requirement in the statute to require the same procedures for public input on the strategic plan that are required for the development of the State plan under § 361.20 of the proposed regulations.

Section 361.72—Content of the Strategic Plan

This proposed new section incorporates the new requirements in section 121 of the Act with no substantive changes.

Section 361.73—Use of Funds

This proposed new section incorporates the requirements in new sections 101(a)(34)(B) and 123 of the Act. The Secretary interprets 101(a)(34)(B) to require that at least 1.5 percent of the funds received under Part B of the Act be used for the activities identified in section 123. The Secretary has clarified that all funds received under Part C of the Act must be used for activities identified in a State's strategic plan, which may include, but are not limited to, the activities identified in section 123 of the Act.

Section 361.74—Allotment of Federal Funds

This proposed new section incorporates by reference the requirements of new section 124 of the Act without substantive change.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1995.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs. A further discussion of the potential costs and benefits of these proposed regulations is contained in the summary at the end of this section of the preamble.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Summary of potential benefits relative to potential costs of the regulatory provisions discussed previously in this preamble:

The Secretary believes that the NPRM would substantially improve The State VR Services Program and would yield substantial benefits in terms of program management, efficiency, and effectiveness. The Secretary also believes that the proposed regulations represent the least burdensome way to implement the 1992 Amendments to Title I of the Act and fulfill important policy objectives that the Secretary considers essential to the success of the program. As stated previously in this preamble, the NPRM has been revised consistent with the Department's principles for regulating, which were developed during the Administration's regulatory reinvention initiative, to further reduce paperwork or process requirements and to enhance the flexibility of DSUs to meet non-statutory requirements. Increased flexibility of DSUs and other benefits resulting from the proposed regulations are discussed in the following paragraphs of this section and throughout the section-by-section summary of the preamble.

Improved Organization of Regulations

The NPRM would substantially reorganize and clarify the current program regulations in order to make the regulations easier to understand and more useful. In response to requests from members of the vocational rehabilitation community, the proposed regulations also would include definitions of a number of previously undefined terms, including ''comparable services and benefits,'' ''maintenance,'' and ''post-employment services.''

Notes and Examples

The Secretary has provided additional clarifying information in the proposed regulations through the use of notes and examples. Many commenters to the draft regulations stated that they find this information more accessible and more useful when it is included in the regulations rather than issued separately by RSA as subregulatory guidance. As stated previously throughout this preamble, the Secretary emphasizes that the limited notes and examples in the proposed regulations are purely illustrative and are not intended to restrict State flexibility.

Reduction of Grantee Burden

Non-statutory paperwork requirements have been eliminated or consolidated throughout the NPRM in an effort to reduce the regulatory burden on States. For example, previously duplicative requirements under § 361.46 (Content of the IWRP) and § 361.47 (Record of services) have been consolidated to reduce the paperwork burden on States and to ensure efficient administration of the program. A list of other sections in which paperwork burden on grantees has been removed or reduced in response to public comment on the draft regulations precedes the section-by-section summary in this preamble. Also, additional burden-reducing steps taken by the Secretary in accordance with the Department's principles for regulating are explained throughout the section-by-section summary in the preamble. For example, the proposed deletion of the requirement that the State plan describe the organizational structure of the State agency and its organizational units is discussed under § 361.13 (State agency for administration) in the section-by-section summary. Those paperwork requirements that would remain in the proposed regulations are considered essential to the proper administration of the program.

Enhanced Protections for Individuals With Disabilities

The proposed regulations include provisions intended to ensure that individuals with disabilities are not improperly denied necessary VR services. In particular, § 361.50 (Written policies governing the provision of services) would require DSUs to ensure that the provision of VR services for an eligible individual is based on the individual's particular rehabilitation needs and would prevent DSUs from arbitrarily limiting the nature or scope of vocational rehabilitation services needed by any eligible individual to achieve an employment outcome. In addition, § 361.54 (Participation of individuals in cost of services based on financial need) would require DSUs to

apply a State financial needs test to each individual in need of a service covered by the test without regard to type of disability. This section would also require DSUs to ensure that the level of an individual's financial participation in the cost of VR services is reasonable, based on the individual's ability to pay, and not so high as to effectively deny the individual a necessary service.

Increased Flexibility of Grantees to Satisfy Statutory Requirements

A number of provisions in the proposed regulations have been revised in an effort to enhance the flexibility of States in meeting specific statutory requirements. For example, proposed § 361.20 (State plan development) would allow States to determine what constitutes appropriate and sufficient notice under the Act for purposes of providing notice of public meetings on State plan development. Although the proposed regulations would not impose any specific minimum Federal requirements for what constitutes ''appropriate and sufficient notice,'' the section-by-section summary of this proposed section identifies suggested ways a DSU might meet these requirements. Similarly, § 361.52 (Opportunity to make informed choices regarding the selection of services and providers) of the proposed regulations identifies possible methods a DSU may follow or sources of information a DSU may maintain to ensure that each eligible individual is afforded an opportunity, as required under the Act, to make an informed choice in selecting vocational rehabilitation services and providers. Finally, proposed § 361.57 (Review of rehabilitation counselor and coordinator determinations) would allow States to establish their own timelines for key stages of the statutorily-mandated fair hearing process.

Additional Benefits

The proposed regulations reflect the policy in the 1992 Amendments of ensuring that individuals are provided necessary information through appropriate modes of communication to enable them to participate in a rehabilitation program or to influence DSU rehabilitation policy development. For example, proposed § 361.20(d) requires a DSU, in developing its State plan, to provide, through appropriate modes of communication, the notices of the public meetings, any materials furnished prior to or during the public meetings, and the approved State plan.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 361.5 Applicable definitions.) (4) Is the description of the regulations in the ''Supplementary Information'' section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 5100, FB–10B), Washington, D.C. 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because these proposed regulations would affect only States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as ''small entities'' in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

Sections 361.10, 361.13, 361.14, 361.15, 361.16, 361.17, 361.18, 361.19, 361.20, 361.21, 361.22, 361.26, 361.27, 361.29, 361.33, 361.34, 361.35, 361.37, 361.40, 361.46, 361.48, 361.49, 361.50, 361.51, 361.52, 361.54, 361.57, 361.71, and 361.72 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: The State Vocational Rehabilitation Services Program

States are eligible to apply for grants under these regulations. The information to be collected includes State plan assurances and descriptions to meet statutory requirements. The Department needs and uses the information to review State plans to determine whether they can be approved. Approval of a State plan is necessary to receive a grant under this program.

All information is to be collected and reported once every three years, with the exception of the following information, which is required annually: advice provided by the State Rehabilitation Advisory Council under § 361.16; collection and analysis of data on qualified personnel needs and personnel development under § 361.18; analysis of characteristics of individuals determined to be ineligible for services and reasons for their ineligibility, evaluation of the effectiveness of the State's vocational rehabilitation program, any changes adopted in State policy or in the State plan as a result of statewide studies and the annual program evaluation, and the methods used to expand and improve vocational rehabilitation services to individuals with the most severe disabilities under § 361.29; revisions to the supported employment plan under § 361.34; a description of the manner in which rehabilitation technology services will be provided throughout the rehabilitation process, the personnel training that will be provided to facilitate the provision of rehabilitation technology services, and the manner in which personal assistance services will be provided to individuals with disabilities under § 361.48. Annual reporting and recordkeeping burden for this collection of information is estimated to average 221.2 hours per response for 82 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 18,138.4 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Laura Oliven.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3214, 330 C Street SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 361

Reporting and recordkeeping requirements, State-administered grant program—education, Vocational rehabilitation.

Dated: August 28, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.126—The State Vocational Rehabilitation Services Program)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 361 to read as follows:

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

Subpart A—General

Subpart B—State Plan for Vocational Rehabilitation Services

State Plan Content: Administration

State Plan Content: Provision and Scope of Services

Subpart C—Financing of State Vocational Rehabilitation Programs

Subpart D—Strategic Plan for Innovation and Expansion of Vocational Rehabilitation Services

Authority: 29 U.S.C. 711(c), unless otherwise noted.

Subpart A—General

§ 361.1 Purpose.

Under the State Vocational Rehabilitation Services Program (program), the Secretary provides grants to assist States in operating a comprehensive, coordinated, effective, efficient, and accountable program that is designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, so that they may prepare for and engage in gainful employment.

(Authority: Sections 12(c) and 100(a)(2) of the Act; 29 U.S.C. 711(c) and 720(a)(2))

§ 361.2 Eligibility for a grant.

Any State that submits to the Secretary a State plan that meets the requirements of section 101(a) of the Act and this part is eligible for a grant under this program.

(Authority: Section 101(a) of the Act; 29 U.S.C. 721(a))

§ 361.3 Authorized activities.

The Secretary makes payments to a State to assist in—

(a) The costs of providing vocational rehabilitation services under the State plan;

(b) Administrative costs under the State plan; and

(c) The costs of developing and implementing the strategic plan.

(Authority: Section 111(a)(1) of the Act; 29 U.S.C. 731(a)(1))

§ 361.4 Applicable regulations.

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), with respect to subgrants to entities that are not State or local governments or Indian tribal organizations.

(2) 34 CFR Part 76 (State-Administered Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), except for § 80.24(a)(2).

(6) 34 CFR Part 81 (General Education Provisions Act-Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 361.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.5 Applicable definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Department
EDGAR
Fiscal year
Nonprofit
Private
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

(1) *Act* means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(2) *Administrative costs under the State plan* means expenses related to program planning, development, monitoring, and evaluation, including, but not limited to, quality assurance; budgeting, accounting, financial management, statistical systems, and related data processing; providing information about the program to the public; technical assistance to other State agencies, private nonprofit organizations, and businesses and industries; the State Rehabilitation Advisory Council and other advisory committees; professional organization membership dues for State unit employees; the removal of architectural barriers in State agency offices and facilities; operating and maintaining State unit facilities, equipment, and grounds; supplies; administration of the comprehensive system of personnel development, including personnel administration, administration of affirmative action plans, and training and staff development; administrative salaries, including clerical and other support staff salaries, in support of these functions; travel costs related to carrying out the program, other than travel costs related to the provision of services; and legal expenses required in the administration of the program.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(3) *American Indian* means an individual who is a member of an Indian tribe.

(Authority: Section 7(20) of the Act; 29 U.S.C. 706(20))

(4) *Applicant* means an individual who submits an application for vocational rehabilitation services in accordance with § 361.41(b)(2).

(Authority: Section 12(c) of the Act; 29 U.S.C.711 (c))

(5) *Appropriate modes of communication* means specialized media systems and devices for individuals with disabilities that enable an individual to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, and augmentative communication devices.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(6) *Assistive technology device means* any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

(Authority: Section 7(23) of the Act; 29 U.S.C. 706(23))

(7) *Assistive technology service* means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including—

(i) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his or her customary environment;

(ii) Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;

(iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(v) Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

(vi) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

(Authority: Sections 7(24) and 12(c) of the Act; 29 U.S.C. 706(24) and 711(c))

(8) *Community rehabilitation program.*

(i) *Community rehabilitation program* means a program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

(A) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.

(B) Testing, fitting, or training in the use of prosthetic and orthotic devices.

(C) Recreational therapy.

(D) Physical and occupational therapy.

(E) Speech, language, and hearing therapy.

(F) Psychiatric, psychological, and social services, including positive behavior management.

(G) Assessment for determining eligibility and vocational rehabilitation needs.

(H) Rehabilitation technology.

(I) Job development, placement, and retention services.

(J) Evaluation or control of specific disabilities.

(K) Orientation and mobility services for individuals who are blind.

(L) Extended employment.

(M) Psychosocial rehabilitation services.

(N) Supported employment services and extended services.

(O) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(P) Personal assistance services.

(Q) Services similar to the services described in paragraphs (A) through (P) of this definition.

(ii) *For the purposes of this definition, the word program* means an agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions.

(Authority: Sections 7(25) and 12(c) of the Act; 29 U.S.C. 706(25) and 711(c))

(9) *Comparable services and benefits* means services and benefits that are—

(i) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

(ii) Available to the individual within a reasonable period of time in accordance with § 361.53; and

(iii) Commensurate to the services that the individual would otherwise receive from the vocational rehabilitation agency.

(Authority: Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

(10) *Competitive employment* means work—

(i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(ii) For which an individual is compensated at or above the minimum wage, but not less than the prevailing wage for the same or similar work in the local community performed by individuals who are not disabled.

(Authority: Sections 7(5), 7(18), and 12(c) of the Act; 29 U.S.C. 706(5), 706(18), and 711(c))

(11) *Construction of a facility for a public or nonprofit community rehabilitation program* means—

(i) The acquisition of land in connection with the construction of a new building for a community rehabilitation program;

(ii) The acquisition of existing buildings;

(iii) The remodeling, alteration, or renovation of existing buildings;

(iv) The construction of new buildings and expansion of existing buildings;

(v) Architect's fees, site surveys, and soil investigation, if necessary, in connection with the construction project;

(vi) The acquisition of initial fixed or movable equipment of any new, newly acquired, newly expanded, newly remodeled, newly altered, or newly renovated buildings that are to be used for community rehabilitation program purposes; and

(vii) Other direct expenditures appropriate to the construction project, except costs of off-site improvements.

(Authority: Sections 7(1) and 12(c) of the Act; 29 U.S.C. 706(1) and 711(c))

(12) *Designated State agency* or *State agency* means the sole State agency, designated in accordance with § 361.13(a), to administer, or supervise local administration of, the State plan for vocational rehabilitation services. The term includes the State agency for individuals who are blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of individuals who are blind.

(Authority: Sections 7(3)(A) and 101(a)(1)(A) of the Act; 29 U.S.C. 706(3)(A) and 721(a)(1)(A))

(13) *Designated State unit* or *State unit* means either—

(i) The State agency vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the State agency, as required under § 361.13(b); or

(ii) The independent State commission, board, or other agency that has vocational rehabilitation, or vocational and other rehabilitation, as its primary function.

(Authority: Sections 7(3)(B) and 101(a)(2)(A) of the Act; 29 U.S.C. 706(3)(B) and 721(a)(2)(A))

(14) *Eligible individual* means an applicant for vocational rehabilitation services who meets the eligibility requirements of § 361.42(a).

(Authority: Sections 7(8)(a) and 102(a)(1) of the Act; 29 U.S.C. 706(8) and 722(a)(1))

(15) *Employment outcome* means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 7(5) and 12(c) of the Act; 29 U.S.C. 706(5) and 711(c))

(16) *Establishment, development, or improvement of a public or nonprofit community rehabilitation program* means—

(i) The establishment of a facility for a public or nonprofit community

rehabilitation program as defined in paragraph (b)(17) of this section;

(ii) Staffing, if necessary to establish, develop, or improve a community rehabilitation program for a maximum period of four years, with Federal financial participation available at the applicable matching rate for the following levels of staffing costs:

(A) 100 percent of staffing costs for the first year.

(B) 75 percent of staffing costs for the second year.

(C) 60 percent of staffing costs for the third year.

(D) 45 percent of staffing costs for the fourth year; and

(iii) Other expenditures related to the establishment, development, or improvement of a community rehabilitation program that are necessary to make the program functional or increase its effectiveness, but are not ongoing operating expenses of the program.

(Authority: Sections 7(6) and 12(c) of the Act; 29 U.S.C. 706(6) and 711(c))

(17) *Establishment of a facility for a public or nonprofit community rehabilitation program means*—

(i) The acquisition of an existing building, and if necessary the land in connection with the acquisition, if the building has been completed in all respects for at least one year prior to the date of acquisition and the Federal share of the cost of the acquisition is not more than $300,000;

(ii) The remodeling or alteration of an existing building, provided the estimated cost of remodeling or alteration does not exceed the appraised value of the existing building;

(iii) The expansion of an existing building, provided that—

(A) The existing building is complete in all respects;

(B) The total size in square footage of the expanded building, notwithstanding the number of expansions, is not greater than twice the size of the existing building;

(C) The expansion is joined structurally to the existing building and does not constitute a separate building; and

(D) The costs of the expansion do not exceed the appraised value of the existing building;

(iv) Architect's fees, site survey, and soil investigation, if necessary in connection with the acquisition, remodeling, alteration, or expansion of an existing building; and

(v) The acquisition of fixed or movable equipment, including the costs of installation of the equipment, if necessary to establish, develop, or improve a community rehabilitation program.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(18) *Extended employment* means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(19) *Extended services,* as used in the definition of ''Supported employment,'' means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most severe disability in supported employment and that are provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this part, 34 CFR part 363, 34 CFR part 376, or 34 CFR part 380, after an individual with a most severe disability has made the transition from support provided by the designated State unit.

(Authority: Section 7(27) of the Act; 29 U.S.C. 706(27))

(20) *Extreme medical risk* means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(Authority: Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

(21) *Family member,* for purposes of receiving vocational rehabilitation services in accordance with § 361.48(a)(9), means an individual—

(i) Who either—

(A) Is a relative or guardian of an applicant or eligible individual; or

(B) Lives in the same household as an applicant or eligible individual;

(ii) Who has a substantial interest in the well-being of that individual; and

(iii) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(Authority: Sections 12(c) and 103(a)(3) of the Act; 29 U.S.C. 711(c) and 723(a)(3))

(22) *Impartial hearing officer.*

(i) Impartial hearing officer means an individual who—

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(B) Is not a member of the State Rehabilitation Advisory Council for the designated State unit;

(C) Has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual;

(D) Has knowledge of the delivery of vocational rehabilitation services, the State plan, and the Federal and State regulations governing the provision of services;

(E) Has received training with respect to the performance of official duties; and

(F) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

(ii) An individual shall not be considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.

(Authority: Section 7(28) of the Act; 29 U.S.C. 706(28))

(23) *Indian tribe* means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).

(Authority: Section 7(21) of the Act; 29 U.S.C. 706(21))

(24) *Individual who is blind* means a person who is blind within the meaning of the applicable State law.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(25) *Individual with a disability,* except in §§ 361.17(a), (b), (c), and (j), 361.19, 361.20, and 361.51(b)(2), means an individual—

(i) Who has a physical or mental impairment;

(ii) Whose impairment constitutes or results in a substantial impediment to employment; and

(iii) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(Authority: Section 7(8)(A) of the Act; 29 U.S.C. 706(8)(A))

(26) *Individual with a disability,* for purposes of §§ 361.17 (a), (b), (c), and (j), 361.19, 361.20, and 361.51(b)(2), means an individual—

(i) Who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Authority: Section 7(8)(B) of the Act; 29 U.S.C. 706(8)(B))

(27) *Individual with a most severe disability* means an individual with a severe disability who meets the designated State unit's criteria for an individual with a most severe disability. This criteria must be consistent with the requirements in § 361.36(c)(3).

(Authority: Section 101(a)(5) of the Act; 29 U.S.C. 721(a)(5))

(28) *Individual with a severe disability* means an individual with a disability—

(i) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(Authority: Section 7(15)(A) of the Act; 29 U.S.C. 708(15)(A))

(29) *Individual's representative* means any representative chosen by an applicant or eligible individual, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(30) *Integrated setting,* with respect to the provision of services or an employment outcome, means a setting typically found in the community in which applicants or eligible individuals have the opportunity to interact on a regular basis with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(31) *Maintenance* means monetary support provided to an eligible individual or an individual receiving extended evaluation services for those living expenses, such as food, shelter, and clothing, that are in excess of the normal living expenses of the individual and that are necessitated by the individual's participation in a program of vocational rehabilitation services.

(Authority: Sections 12(c) and 103(a)(5) of the Act; 29 U.S.C. 711(c) and 723(a)(5))

Note: The following are examples of expenses that would meet the definition of maintenance.

Example: The cost of a uniform or other suitable clothing that is required for an individual's job placement or job seeking activities.

Example: The cost of short-term shelter that is required in order for an individual to participate in vocational training at a site that is not within commuting distance of an individual's home.

Example: The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement.

Example: The costs of food, clothing, and shelter for homeless or recently deinstitutionalized individuals until other financial assistance is secured for those costs.

(32) *Nonprofit,* with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

(Authority: Section 7(10) of the Act; 29 U.S.C. 706(10))

(33) *Ongoing support services,* as used in the definition of ''Supported employment''—

(i) Means services that are—

(A) Needed to support and maintain an individual with a most severe disability in supported employment;

(B) Identified based on a determination by the designated State unit of the individual's needs as specified in an individualized written rehabilitation program; and

(C) Furnished by the designated State unit from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment;

(ii) Must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on—

(A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

(B) If under special circumstances, especially at the request of the individual, the individualized written rehabilitation program provides for off-site monitoring, twice-monthly meetings with the individual;

(iii) Consist of—

(A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in this part;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(C) Job development and placement;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of vocational rehabilitation services for individuals, described in § 361.48; or

(I) Any service similar to the foregoing services.

(Authority: Sections 7(33) and 12(c) of the Act; 29 U.S.C. 706(33) and 711(c))

(34) *Personal assistance services* means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if

the individual did not have a disability. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

(Authority: Sections 7(11) and 103(a)(15) of the Act; 29 U.S.C. 706(11) and 29 U.S.C. 723)

(35) *Physical and mental restoration services* means—

(i) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(ii) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(iii) Dentistry;

(iv) Nursing services;

(v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(vi) Drugs and supplies;

(vii) Prosthetic, orthotic, or other assistive devices, including hearing aids;

(viii) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with State licensure laws;

(ix) Podiatry;

(x) Physical therapy;

(xi) Occupational therapy;

(xii) Speech or hearing therapy;

(xiii) Mental health services;

(xiv) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(xv) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(xvi) Other medical or medically related rehabilitation services.

(Authority: Sections 12(c) and 103(a)(4) of the Act; 29 U.S.C. 711(c) and 723(a)(4))

(36) *Physical or mental impairment* means an injury, disease, or other condition that materially limits, or if not treated will probably result in materially limiting, mental or physical functioning.

(Authority: Sections 7(8)(A) and 12(c) of the Act; 29 U.S.C. 706(8)(A) and 711(c))

(37) *Post-employment services* means one or more of the services identified in § 361.48 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

Note: Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Post-employment services are to be provided under an amended individualized written rehabilitation program; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements in this part as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, e.g., the individual's employment is jeopardized because of conflicts with supervisors or co-workers and the individual needs mental health services and counseling to maintain the employment; to regain employment, e.g., the individual's job is eliminated through reorganization and new placement services are needed; and to advance in employment, e.g., the employment is no longer consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests.

(38) *Rehabilitation engineering* means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

(Authority: Sections 7(13) and 12(c) of the Act; 29 U.S.C. 706(13) and 711(c))

(39) *Rehabilitation technology* means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(Authority: Section 7(13) of the Act; 29 U.S.C. 706(13))

(40) *Reservation* means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Authority: Section 130(c) of the Act; 29 U.S.C. 750(c))

(41) *Sole local agency* means a unit or combination of units of general local government or one or more Indian tribes that has the sole responsibility under an agreement with, and the supervision of, the State agency to conduct a local or tribal vocational rehabilitation program, in accordance with the State plan.

(Authority: Section 7(9) of the Act; 29 U.S.C. 706(9))

(42) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Authority: Section 7(16) of the Act; 29 U.S.C. 706(16))

(43) *State plan* means the State plan for vocational rehabilitation services or the vocational rehabilitation services part of a consolidated rehabilitation plan under § 361.10(c).

(Authority: Sections 12(c) and 101 of the Act; 29 U.S.C. 711(c) and 721)

(44) *Substantial impediment to employment* means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

(Authority: Sections 7(8)(A) and 12(c) of the Act; 29 U.S.C. 706(8)(A) and 711(c))

(45) *Supported employment* means—

(i) Competitive employment in an integrated setting with ongoing support services for individuals with the most severe disabilities—

(A) For whom competitive employment has not traditionally occurred or for whom competitive

employment has been interrupted or intermittent as a result of a severe disability; and

(B) Who, because of the nature and severity of their disabilities, need intensive supported employment services from the designated State unit and extended services after transition in order to perform this work; or

(ii) Transitional employment for individuals with the most severe disabilities due to mental illness.

(Authority: Section 7(18) of the Act; 29 U.S.C. 706(18)(A))

(46) *Supported employment services* means ongoing support services and other appropriate services needed to support and maintain an individual with a most severe disability in supported employment that are provided by the designated State unit—

(i) For a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time in order to achieve the rehabilitation objectives identified in the individualized written rehabilitation program; and

(ii) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(Authority: Sections 7(34) and 12(c) of the Act; 29 U.S.C. 706(34) and 711(c))

(47) *Transition services* means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives identified in the student's individualized written rehabilitation program (IWRP).

(Authority: Section 7(35) and 103(a)(14) of the Act; 29 U.S.C. 706(35) and 723(a)(14))

(48) *Transitional employment,* as used in the definition of ''Supported employment,'' means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most severe disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

(Authority: Sections 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c))

(49) *Transitioning student* means a student who is an eligible individual in accordance with the requirements of § 361.42(a)(1) and who is receiving transition services as defined in paragraph (b)(47) of this section.
(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(50) *Transportation* means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in any vocational rehabilitation service.

(Authority: Sections 12(c) and 103(a)(10) of the Act; 29 U.S.C. 711(c) and 723(a)(10))

Note: The following are examples of expenses that would meet the definition of transportation.

Example: Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any vocational rehabilitation service.

Example: Short-term travel-related expenses, such as food and shelter, incurred by an applicant participating in evaluation or assessment services that necessitates travel.

Example: Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual's current residence.

Example: The purchase and repair of vehicles, including vans, but not the modification of these vehicles, as modification would be considered a rehabilitation technology service.

(51) *Vocational rehabilitation services*—

(i) If provided to an individual, means those services listed in § 361.48; and

(ii) If provided for the benefit of groups of individuals, also means those services listed in § 361.49.

(Authority: Sections 103(a) and (b) of the Act; 29 U.S.C. 723(a) and (b))

Subpart B—State Plan for Vocational Rehabilitation Services

§ 361.10 Submission, approval, and disapproval of the State plan.

(a) *Purpose.* In order for a State to receive a grant under this part, the designated State agency shall submit to the Secretary, and obtain approval of, a State plan that contains a description of the State's vocational rehabilitation services program, the plans and policies to be followed in carrying out the program, and other information requested by the Secretary, in accordance with the requirements of this part.

(b) *Separate part relating to rehabilitation of individuals who are blind.* If a separate State agency administers or supervises the administration of a separate part of the State plan relating to the rehabilitation of individuals who are blind, that part of the State plan must separately conform to all requirements under this part that are applicable to a State plan.

(c) *Consolidated rehabilitation plan.* The State may choose to submit a consolidated rehabilitation plan that includes the State plan for vocational rehabilitation services and the State's plan for its program for persons with developmental disabilities. The State planning and advisory council for developmental disabilities and the agency administering the State's program for persons with developmental disabilities must concur in the submission of a consolidated rehabilitation plan. A consolidated rehabilitation plan must comply with, and be administered in accordance with, the Act and the Developmental Disabilities Assistance and Bill of Rights Act, as amended.

(d) *Public participation.* The State shall develop the State plan with input from the public, through public meetings, in accordance with the requirements of § 361.20.

(e) *Duration.* The State plan must cover a three-year period or, with the prior approval of the Secretary, some other period that corresponds to the period for which the State submits a plan under another Federal law, such as Part B of the Individuals with Disabilities Education Act (IDEA).

(f) *Submission of the State plan.* The State shall submit the State plan to the Secretary for approval—

(1) No later than July 1 of the year preceding the first fiscal year for which the State plan is submitted; or

(2) With the prior approval of the Secretary, no later than the date on which the State is required to submit a State plan under another Federal law.

(g) *Revisions to the State plan.* The State shall submit to the Secretary for approval revisions to the State plan in accordance with the requirements of this part and 34 CFR 76.140.

(h) *Interim State plan.* The Secretary may require a State to submit an interim State plan for a period of less than three years following a reauthorization of the Act and prior to the publication of final regulations.

(i) *Approval.* The Secretary approves a State plan and revisions to the State plan that conform to the requirements of this part and section 101(a) of the Act.

(j) *Disapproval.* The Secretary disapproves a State plan that does not conform to the requirements of this part and section 101(a) of the Act, in accordance with the following procedures:

(1) *Informal resolution.* Prior to disapproving a State plan, the Secretary attempts to resolve disputes informally with State officials.

(2) *Notice.* If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to disapprove the State plan and of the opportunity for a hearing.

(3) *State plan hearing.* If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing in accordance with the provisions of 34 CFR Part 81, Subpart A.

(4) *Initial decision.* The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(5) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR 81.42.

(6) *Review by the Secretary.* The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(7) *Final decision of the Department.* The final decision of the Department is made in accordance with 34 CFR 81.44.

(8) *Judicial review.* A State may appeal the Secretary's decision to disapprove the State plan by filing a petition for review with the United States Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: Sections 6, 101(a) and (b), and 107(d) of the Act; 29 U.S.C. 705, 721(a) and (b), and 727(d))

§ 361.11 Withholding of funds.

(a) *Basis for withholding.* The Secretary may withhold or limit payments under sections 111, 124, or 632(a) of the Act, as provided by section 107(c) and (d) of the Act, if the Secretary determines that—

(1) The State plan, including the supported employment supplement and the strategic plan supplement, has been so changed that it no longer conforms with the requirements of this part or 34 CFR part 363; or

(2) In the administration of the State plan, there has been a failure to comply substantially with any provision of that plan or a program improvement plan established in accordance with section 106 of the Act.

(b) *Informal resolution.* Prior to withholding or limiting payments in accordance with this section, the Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice.* If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to withhold or limit payments and of the opportunity for a hearing.

(d) *Withholding hearing.* If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(e) *Initial decision.* The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(f) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR 81.42.

(g) *Review by the Secretary.* The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(h) *Final decision of the Department.* The final decision of the Department is made in accordance with 34 CFR 81.44.

(i) *Judicial review.* A State may appeal the Secretary's decision to withhold or limit payments by filing a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: Sections 101(b), 107(c), and 107(d) of the Act; 29 U.S.C. 721(b), 727(c)(1) and (2), and 727(d))

State Plan Content: Administration

§ 361.12 Methods of administration.

The State plan must assure that the State agency, and the designated State unit if applicable, employs methods of administration found necessary by the Secretary for the proper and efficient administration of the plan and for carrying out all functions for which the State is responsible under the plan and this part. These methods must include procedures to ensure accurate data collection and financial accountability.

(Authority: Section 101(a)(6) of the Act; 29 U.S.C. 721(a)(6))

§ 361.13 State agency for administration.

(a) *Designation of State agency.* The State plan must designate a State agency as the sole State agency to administer the State plan, or to supervise its administration in a political subdivision of the State by a sole local agency, in accordance with the following requirements:

(1) *General.* Except as provided in paragraphs (a)(2) and (3) of this section, the State plan must provide that the designated State agency is one of the following types of agencies:

(i) A State agency that is an independent State commission, board, or other agency that has as its major function vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities.

(ii) The State agency administering or supervising the administration of education or vocational education in the State, provided that it includes a vocational rehabilitation unit as provided in paragraph (b) of this section.

(iii) A State agency that includes a vocational rehabilitation unit, as provided in paragraph (b) of this section, and at least two other major organizational units, each of which administers one or more of the State's major programs of public education, public health, public welfare, or labor.

(2) *American Samoa.* In the case of American Samoa, the State plan must designate the Governor.

(3) *Designated State agency for individuals who are blind.* If a State commission or other agency that provides assistance or services to individuals who are blind is authorized under State law to provide vocational rehabilitation services to individuals who are blind, and this commission or agency is primarily concerned with vocational rehabilitation or includes a vocational rehabilitation unit as provided in paragraph (b) of this section, the State plan may designate that agency as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for individuals who are blind or to supervise its administration in a political subdivision of the State by a sole local agency.

(b) *Designation of State unit.* (1) If the designated State agency is of the type

specified in paragraph (a)(1)(ii) or (a)(1)(iii) of this section, or if the designated State agency specified in paragraph (a)(3) of this section does not have as its major function vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities, the State plan must assure that the agency (or each agency if two agencies are designated) includes a vocational rehabilitation bureau, division, or unit that—

(i) Is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State agency's vocational rehabilitation program under the State plan, including those responsibilities specified in paragraph (d) of this section;

(ii) Has a full-time director;

(iii) Has a staff, at least 90 percent of whom are employed full time on the rehabilitation work of the organizational unit; and

(iv) Is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency or, in the case of an agency described in paragraph (a)(1)(ii) of this section, is so located and has that status or has a director who is the executive officer of the State agency.

(2) In the case of a State that has not designated a separate State agency for individuals who are blind, as provided for in paragraph (a)(3) of this section, the State may assign responsibility for the part of the plan under which vocational rehabilitation services are provided to individuals who are blind to one organizational unit of the designated State agency and may assign responsibility for the rest of the plan to another organizational unit of the designated State agency, with the provisions of paragraph (b)(1) of this section applying separately to each of these units.

(c) *Responsibility for administration.* The State plan must assure that all decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of these services are made by the designated State unit or the sole local agency under the supervision of the State unit. This responsibility may not be delegated to any other agency or individual.

(Authority: Sections 101(a)(1) and 101(a)(2) of the Act; 29 U.S.C. 721(a)(1) and 721(a)(2))

§ 361.14 Substitute State agency.

(a) *General provisions.*

(1) If the Secretary has withheld all funding from a State under § 361.11, the State may designate another agency to substitute for the designated State agency in carrying out the State's program of vocational rehabilitation services.

(2) Any public or nonprofit private organization or agency within the State or any political subdivision of the State is eligible to be a substitute agency.

(3) The substitute agency shall submit a State plan that meets the requirements of this part.

(4) The Secretary makes no grant to a substitute agency until the Secretary approves its plan.

(b) *Substitute agency matching share.* The Secretary does not make any payment to a substitute agency unless it has provided assurances that it will contribute the same matching share as the State would have been required to contribute if the State agency were carrying out the vocational rehabilitation program.

(Authority: Section 107(c)(3) of the Act; 29 U.S.C. 727(c)(3))

§ 361.15 Local administration.

(a) If the State plan provides for local administration, it must—

(1) Identify each local agency;

(2) Assure that each local agency is under the supervision of the designated State unit and is the sole local agency responsible for the administration of the program within the political subdivision that it serves; and

(3) Describe the methods each local agency will use to administer the vocational rehabilitation program, in accordance with the State plan.

(b) A separate local agency serving individuals who are blind may administer that part of the plan relating to vocational rehabilitation of individuals who are blind, under the supervision of the designated State unit for individuals who are blind.

(Authority: Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§ 361.16 Establishment of an independent commission or a State Rehabilitation Advisory Council.

(a) *General requirement.* Except as provided in paragraph (b) of this section, the State plan must contain one of the following two assurances:

(1) An assurance that the State agency is an independent State commission that—

(i) Is primarily concerned with vocational rehabilitation or vocational and other rehabilitation services, in accordance with § 361.13(a)(1)(i);

(ii) Is consumer-controlled by persons who—

(A) Are individuals with physical or mental impairments that substantially limit major life activities; and

(B) Represent individuals with a broad range of disabilities;

(iii) Includes individuals representing family members, advocates, and authorized representatives of individuals with mental impairments; and

(iv) Conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers in the State, in accordance with the provisions in § 361.17(h)(3).

(2) An assurance that—

(i) The State has established a State Rehabilitation Advisory Council (Council) that meets the requirements of § 361.17;

(ii) The designated State unit seeks and seriously considers, on a regular and ongoing basis, advice from the Council regarding the development, implementation, and amendment of the State plan, the strategic plan, and other policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services in the State;

(iii) The designated State unit transmits to the Council—

(A) All plans, reports, and other information required under the Act to be submitted to the Secretary;

(B) Copies of all written policies, practices, and procedures of general applicability provided to or used by rehabilitation personnel; and

(C) Copies of due process hearing decisions in a manner that preserves the confidentiality of the participants in the hearings; and

(iv) The State plan summarizes annually the advice provided by the Council, including recommendations from the annual report of the Council, the survey of consumer satisfaction, and other reports prepared by the Council, and the State agency's response to the advice and recommendations, including the manner in which the State will modify its policies and procedures based on the survey of consumer satisfaction and explanations of reasons for rejecting any advice or recommendations of the Council.

(b) *Exception for separate State agency for individuals who are blind.* In the case of a State that designates a separate State agency, under § 361.13(a)(3), to administer the part of the State plan under which vocational rehabilitation services are provided to individuals who are blind, the State plan must contain one of the following four assurances:

(1) An assurance that an independent commission in accordance with paragraph (a)(1) of this section is responsible under State law for

operating or overseeing the operation of the vocational rehabilitation program of both the State agency that administers the part of the State plan under which vocational rehabilitation services are provided to individuals who are blind and the State agency that administers the remainder of the State plan.

(2) An assurance that—

(i) An independent commission that is consumer-controlled by, and represents the interests of, individuals who are blind and conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers, in accordance with the provisions of § 361.17(h)(3), is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State for individuals who are blind; and

(ii) An independent commission that is consumer-controlled in accordance with paragraph (a)(1)(i) of this section and conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers, in accordance with § 361.17(h)(3), is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State for all individuals with disabilities, except individuals who are blind.

(3) An assurance that—

(i) An independent commission that is consumer-controlled by, and represents the interests of, individuals who are blind and that conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers, in accordance with § 361.17(h)(3), is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State for individuals who are blind; and

(ii) The State has established a State Rehabilitation Advisory Council that meets the criteria in § 361.17 and carries out the duties of a Council with respect to functions for, and services provided to, individuals with disabilities, except for individuals who are blind.

(4) An assurance that—

(i) An independent commission that is consumer-controlled in accordance with paragraph (a)(1)(i) of this section and conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers, in accordance with the provisions of § 361.17(h)(3), is responsible under State law for operating or overseeing the operation of the vocational rehabilitation services for all individuals in the State, except individuals who are blind; and

(ii) The State has established a State Rehabilitation Advisory Council that meets the criteria in § 361.17 and carries out the duties of a Council with respect to functions for, and services provided to, individuals who are blind.

(Authority: Sections 101(a)(32) and 101(a)(36) of the Act; 29 U.S.C. 721(a)(32) and 721(a)(36))

§ 361.17 Requirements for a State Rehabilitation Advisory Council.

If the State plan contains an assurance that the State has established a Council under § 361.16(a)(2), (b)(3)(ii), or (b)(4)(ii), the State plan must also contain an assurance that the Council meets the following requirements:

(a) *Appointment.* (1) The members of the Council shall be—

(i) Appointed by the Governor; or

(ii) If State law vests appointment authority in an entity other than, or in conjunction with, the Governor (such as one or more houses of the State legislature or an independent board that has general appointment authority), appointed by that entity or entities.

(2) The appointing authority shall select members of the Council after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities.

(b) *Composition.* (1) *General.* Except as provided in paragraph (b)(3) of this section, the Council shall be composed of at least 13 members, including—

(i) At least one representative of the Statewide Independent Living Council, who must be the chairperson of, or other individual recommended by, the Statewide Independent Living Council;

(ii) At least one representative of a parent training and information center established pursuant to section 631(e)(1) of IDEA;

(iii) At least one representative of the Client Assistance Program (CAP), established under 34 CFR part 370, who must be the director of, or other individual recommended by, the CAP;

(iv) At least one vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member if employed by the designated State agency;

(v) At least one representative of community rehabilitation program service providers;

(vi) Four representatives of business, industry, and labor;

(vii) Representatives of disability groups that include a cross section of—

(A) Individuals with physical, cognitive, sensory, and mental disabilities; and

(B) Parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities who have difficulty representing themselves due to their disabilities;

(viii) Current or former applicants for, or recipients of, vocational rehabilitation services; and

(ix) The director of the designated State unit as an ex officio, nonvoting member.

(2) *Employees of the designated State agency.* Employees of the designated State agency may serve only as nonvoting members of the Council.

(3) *Composition of a separate Council for a separate State agency for individuals who are blind.* Except as provided in paragraph (b)(4) of this section, if the State establishes a separate Council for a separate State agency for individuals who are blind, that Council must—

(i) Conform with all of the composition requirements for a Council under paragraph (b)(1) of this section, except the requirements in paragraph (b)(1)(vii), unless the exception in paragraph (b)(4) of this section applies; and

(ii) Include—

(A) At least one representative of a disability advocacy group representing individuals who are blind; and

(B) At least one parent, family member, guardian, advocate, or authorized representative of an individual who is blind, has multiple disabilities, and has difficulty representing himself or herself due to disabilities.

(4) *Exception.* If State law in effect on October 29, 1992 requires a separate Council under paragraph (b)(3) of this section to have fewer than 13 members, the separate Council is deemed to be in compliance with the composition requirements in paragraphs (b)(1)(vi) and (b)(1)(viii) of this section if it includes at least one representative who meets the requirements for each of those paragraphs.

(c) *Majority.* A majority of the Council members shall be individuals with disabilities who are not employed by the designated State unit.

(d) *Chairperson.* The chairperson shall be—

(1) Selected by the members of the Council from among the voting members of the Council, subject to the veto power of the Governor; or

(2) If the Governor does not have veto power pursuant to State law, selected by the Governor, or by the Council if required by the Governor, from among the voting members of the Council.

(e) *Terms of appointment.* (1) Each member of the Council shall be appointed for a term of no more than three years and may serve for no more than two consecutive full terms.

(2) A member appointed to fill a vacancy occurring prior to the end of the term for which the predecessor was appointed shall be appointed for the remainder of the predecessor's term.

(3) The terms of service of the members initially appointed must be for varied numbers of years to ensure that terms expire on a staggered basis.

(f) *Vacancies.* (1) A vacancy in the membership of the Council must be filled in the same manner as the original appointment.

(2) No vacancy affects the power of the remaining members to execute the duties of the Council.

(g) *Conflict of interest.* No member of the Council shall cast a vote on any matter that would provide direct financial benefit to the member or the member's organization or otherwise give the appearance of a conflict of interest under State law.

(h) *Functions.* The Council shall—

(1) Review, analyze, and advise the designated State unit regarding the performance of the State unit's responsibilities under this part, particularly responsibilities related to—

(i) Eligibility, including order of selection;

(ii) The extent, scope, and effectiveness of services provided; and

(iii) Functions performed by State agencies that affect or potentially affect the ability of individuals with disabilities to achieve rehabilitation goals and objectives under this part;

(2) Advise and, at the discretion of the State agency, assist the State unit in the preparation of applications, the State plan, the strategic plan, and amendments to the plans, reports, needs assessments, and evaluations required by this part;

(3) To the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with—

(i) The functions performed by State agencies and other public and private entities responsible for serving individuals with disabilities; and

(ii) The vocational rehabilitation services provided by State agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities from funds made available under the Act or through other public or private sources;

(4) Prepare and submit to the Governor, or appropriate State entity, and to the Secretary no later than 90 days after the end of the Federal fiscal year an annual report on the status of vocational rehabilitation programs operated within the State and make the report available to the public through appropriate modes of communication;

(5) Coordinate with other councils within the State, including the Statewide Independent Living Council established under 34 CFR part 364, the advisory panel established under section 613(a)(12) of IDEA, the State Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, and the State mental health planning council established under section 1916(e) of the Public Health Service Act;

(6) Advise the designated State agency and provide for coordination and the establishment of working relationships between the designated State agency and the Statewide Independent Living Council and centers for independent living within the State; and

(7) Perform other comparable functions, consistent with the purpose of this part, that the Council determines to be appropriate.

(i) *Resources.*

(1) The Council, in conjunction with the designated State unit, shall prepare a plan for the provision of resources, including staff and other personnel, that may be necessary for the Council to carry out its functions under this part.

(2) In implementing the resources plan, the Council must rely on existing resources to the maximum extent possible.

(3) Any disagreements between the designated State unit and the Council regarding the amount of resources necessary must be resolved by the Governor or other appointing entity, consistent with paragraphs (i)(1) and (2) of this section.

(4) The Council shall, consistent with State law, supervise and evaluate the staff and personnel that are necessary to carry out its functions.

(5) Those staff and personnel that are assisting the Council in carrying out its functions may not be assigned duties by the designated State unit or any other agency or office of the State that would create a conflict of interest.

(j) *Meetings.* The Council shall—

(1) Convene at least four meetings a year to conduct Council business that are publicly announced, open and accessible to the public, including individuals with disabilities, unless there is a valid reason for an executive session; and

(2) Conduct forums or hearings, as appropriate, that are publicly announced, open and accessible to the public, including individuals with disabilities.

(k) *Compensation.* Funds appropriated under Title I of the Act, except funds to carry out sections 112 and 130 of the Act, may be used to compensate and reimburse the expenses of Council members in accordance with section 105(g) of the Act.

(Authority: Section 105 of the Act; 29 U.S.C. 725)

§ 361.18 Comprehensive system of personnel development.

The State plan must describe the procedures and activities the State agency will undertake to establish and maintain a comprehensive system of personnel development designed to ensure an adequate supply of qualified rehabilitation personnel, including professionals and paraprofessionals, for the designated State unit. If the State agency has a State Rehabilitation Advisory Council, this description must, at a minimum, provide for the involvement of the Council in the development of personnel standards in accordance with paragraph (c) of this section. This description must also conform with the following requirements:

(a) *Data system on personnel and personnel development.* The State plan must describe the development and maintenance of a system by the State agency for collecting and analyzing on an annual basis data on qualified personnel needs and personnel development, in accordance with the following requirements:

(1) Data on qualified personnel needs must include—

(i) The number of personnel who are employed by the State agency in the provision of vocational rehabilitation services in relation to the number of individuals served, broken down by personnel category;

(ii) The number of personnel currently needed by the State agency to provide vocational rehabilitation services, broken down by personnel category; and

(iii) Projections of the number of personnel, broken down by personnel category, who will be needed by the State agency to provide vocational rehabilitation services in the State in five years based on projections of the number of individuals to be served, including individuals with severe disabilities, the number of personnel

expected to retire or leave the field, and other relevant factors.

(2) Data on personnel development must include—

(i) A list of the institutions of higher education in the State that are preparing vocational rehabilitation professionals, by type of program;

(ii) The number of students enrolled at each of those institutions, broken down by type of program; and

(iii) The number of students who graduated during the prior year from each of those institutions with certification or licensure, or with the credentials for certification or licensure, broken down by the personnel category for which they have received, or have the credentials to receive, certification or licensure.

(b) *Plan for recruitment, preparation, and retention of qualified personnel.* The State plan must describe the development, updating, and implementation of a plan to address the current and projected needs for personnel who are qualified in accordance with paragraph (c) of this section. The plan must identify the personnel needs based on the data collection and analysis system described in paragraph (a) of this section and must provide for the coordination and facilitation of efforts between the designated State unit and institutions of higher education and professional associations to recruit, prepare, and retain personnel who are qualified in accordance with paragraph (c) of this section, including personnel from minority backgrounds and personnel who are individuals with disabilities.

(c) *Personnel standards.* (1) The State plan must include the State agency's policies and describe the procedures the State agency will undertake to establish and maintain standards to ensure that professional and paraprofessional personnel needed within the State unit to carry out this part are appropriately and adequately prepared and trained, including—

(i) Standards that are consistent with any national or State-approved or recognized certification, licensing, registration, or other comparable requirements (including State personnel requirements) that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services; and

(ii) To the extent those standards are not based on the highest requirements in the State applicable to that profession or discipline, the steps the State is currently taking and the steps the State plans to take to retrain or hire personnel to meet standards that are based on the highest requirements in the State, including measures to notify State unit personnel, the institutions of higher education identified under paragraph (a)(2)(i) of this section, and other public agencies of these steps and the timelines for taking each step.

(2) As used in this section—

(i) ''Highest requirements in the State applicable to that profession or discipline'' means the highest entry-level academic degree or equivalent experience needed for any national or State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline. The current requirements of all State statutes and regulations of other agencies in the State applicable to that profession or discipline must be considered and must be kept on file by the designated State unit and available to the public.

(ii) ''Profession or discipline'' means a specific occupational category, including any paraprofessional occupational category, that—

(A) Provides rehabilitation services to individuals with disabilities;

(B) Has been established or designated by the State; and

(C) Has a specified scope of responsibility.

(d) *Staff development.* (1) The State plan must include the State agency's policies and describe the procedures and activities the State agency will undertake to ensure that all personnel employed by the State unit receive appropriate and adequate training, including a description of—

(i) A system of staff development for rehabilitation professionals and paraprofessionals within the State unit, particularly with respect to rehabilitation technology; and

(ii) Procedures for acquiring and disseminating to rehabilitation professionals and paraprofessionals within the designated State unit significant knowledge from research and other sources, including procedures for providing training regarding the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1992.

(2) The specific training areas for staff development must be based on the needs of each State unit and may include, but are not limited to, training with respect to the requirements of the Americans with Disabilities Act, IDEA, and Social Security work incentive programs, training to facilitate informed choice under this program, and training to improve the provision of services to culturally diverse populations.

(e) *Personnel to address individual communication needs.* The State plan must describe how the State unit—

(1) Includes among its personnel, or obtains the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability; and

(2) Includes among its personnel, or obtains the services of, individuals able to communicate with applicants and eligible individuals in appropriate modes of communication.

(f) *Performance evaluation system.* The State plan must describe how the system for evaluating the performance of rehabilitation counselors, coordinators, and other personnel used in the State unit facilitates, and in no way impedes, the accomplishment of the purpose and policy of the program as described in sections 100(a)(2) and 100(a)(3) of the Act, including the policy of serving, among others, individuals with the most severe disabilities.

(g) *Coordination with personnel development under IDEA.* The State plan must describe the procedures and activities the State agency will undertake to coordinate its comprehensive system of personnel development under the Act with personnel development under IDEA.

(Authority: Sections 101 (a)(7) and (a)(35) of the Act; 29 U.S.C. 721 (a)(7) and (35))

Note: Under the Act and the regulations in this part, the State agency is required to collect and analyze data regarding personnel needs by type or category of personnel. The personnel data must be collected and analyzed according to personnel category breakdowns that are based on the major categories of staff in the State unit. Similarly, the data from institutions of higher education must be broken down by type of program to correspond as closely as possible with the personnel categories of the State unit.

§ 361.19 Affirmative action for individuals with disabilities.

The State plan must assure that the State agency takes affirmative action to employ and advance in employment qualified individuals with disabilities.

(Authority: Section 101(a)(6)(A) of the Act; 29 U.S.C. 721(a)(6)(A))

§ 361.20 State plan development.

(a) *Public participation requirements.* (1) *Plan development and revisions.* The State plan must assure that the State unit conducts public meetings throughout the State to provide all segments of the public, including interested groups, organizations, and individuals, an opportunity to comment on the State plan prior to its

development and to comment on any revisions to the State plan.

(2) *Notice requirements.* The State plan must assure that the State unit, prior to conducting public meetings, provides appropriate and sufficient notice throughout the State of the meetings in accordance with—

(i) State law governing public meetings; or

(ii) In the absence of State law governing public meetings, procedures developed by the State unit in consultation with the State Rehabilitation Advisory Council.

(3) *Plan revisions based on consumer satisfaction surveys.* The State plan must describe the manner in which the State plan will be revised based on the results of consumer satisfaction surveys conducted by the State Rehabilitation Advisory Council under § 361.17(h)(3) or by the State agency if it is an independent commission in accordance with the requirements of § 361.16.

(b) *Special consultation requirements.* The State plan must assure that, as appropriate, the State unit actively consults in the development and revision of the State plan with the CAP director, the State Rehabilitation Advisory Council, and, as appropriate, those Indian tribes, tribal organizations, and native Hawaiian organizations that represent significant numbers of individuals with disabilities within the State.

(c) *Summary of public comments.* The State plan must include a summary of the public comments on the State plan, including comments on revisions to the State plan and the State unit's response to those comments.

(d) *Appropriate modes of communication.* The State unit shall provide, through appropriate modes of communication, the notices of the public meetings, any materials furnished prior to or during the public meetings, and the approved State plan.

(Authority: Sections 101(a)(20), 101(a)(23), 101(a)(32), and 105(c)(2) of the Act; 29 U.S.C. 721(a)(20), (23), and (32) and 725(c)(2))

§ 361.21 Consultations regarding the administration of the State plan.

(a) The State plan must assure that, in connection with matters of general policy development and implementation arising in the administration of the State plan, the State unit seeks and takes into account the views of—

(1) Individuals who receive vocational rehabilitation services or, as appropriate, the individuals' representatives;

(2) Personnel working in the field of vocational rehabilitation;

(3) Providers of vocational rehabilitation services;

(4) The CAP director; and

(5) The State Rehabilitation Advisory Council, if the State has a Council.

(b) The State plan must specifically describe the manner in which the State unit will take into account the views regarding State policy and administration of the State plan that are expressed in the consumer satisfaction surveys conducted by the State Rehabilitation Advisory Council under § 361.17(h)(3) or by the State agency if it is an independent commission in accordance with the requirements of § 361.16(a)(1).

(Authority: Sections 101(a)(18), 101(a)(32), and 105(c)(2) of the Act; 29 U.S.C. 721(a)(18), 721(a)(32), and 725(c)(2))

§ 361.22 Cooperation with agencies responsible for transitioning students.

(a) *Transitioning students who are receiving special education services.* (1) *General.* The State plan must contain plans, policies, and procedures that are designed to facilitate the transition of students who are receiving special education services from the provision of a free appropriate public education under the responsibility of an educational agency to the provision of vocational rehabilitation services under the responsibility of the designated State unit. These plans, policies, and procedures must be designed to facilitate the development and accomplishment of long-term rehabilitation goals, intermediate rehabilitation objectives, and goals and objectives related to enabling a transitioning student to live independently before leaving a school setting, to the extent the goals and objectives are included in an individualized education program of the transitioning student.

(2) *Formal interagency agreement.* The State plan must assure that the State unit enters into formal interagency agreements with the State education agency and, as appropriate, with local education agencies, that are responsible for the free appropriate public education of transitioning students who are receiving special education services.

(i) Formal interagency agreements must, at a minimum, identify—

(A) Policies, practices, and procedures that can be coordinated between the agencies, including definitions, standards for eligibility, policies and procedures for making referrals, procedures for outreach to and identification of youth who are receiving special education services and are in need of transition services, and procedures and timeframes for evaluation and follow-up of those transitioning students; and

(B) The roles of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services.

(ii) Formal interagency agreements may, as appropriate, identify—

(A) Available resources, including sources of funds for the development and expansion of services;

(B) The financial responsibility of each agency in providing services to transitioning students who are receiving special education services, consistent with State law;

(C) Procedures for resolving disputes between the agencies that are parties to the agreement; and

(D) All other components necessary to ensure meaningful cooperation among agencies, including procedures to facilitate the development of local teams to coordinate the provision of services to individuals, sharing data, and coordinating joint training of staff in the provision of transition services.

Note: The following excerpt from page 33 of Senate Report No. 102–357 further clarifies the provision of transition services by the State vocational rehabilitation agency:

The committee intends that students with disabilities who are eligible for, and who need, vocational rehabilitation services will receive those services as soon as possible, consistent with Federal and State law. These provisions are not intended in any way to shift the responsibility of service delivery from education to rehabilitation during the transition years. School officials will continue to be responsible for providing a free and appropriate public education as defined by the IEP. The role of the rehabilitation system is primarily one of planning for the student's years after leaving school. (S. Rep. No. 357, 102d Cong., 2d. Sess. 33 (1992))

(b) *Transitioning students who are not receiving special education services.* The State plan must contain plans, policies, and procedures, including cooperation with appropriate agencies, designed to ensure that transitioning students who are not receiving special education services have access to and can receive vocational rehabilitation services, if appropriate, and to ensure outreach to and identification of those individuals.

(Authority: Sections 101(a)(11)(C), 101(a)(24) and 101(a)(30) of the Act; 29 U.S.C. 721 (a)(11), (a)(24), and (a)(30))

§ 361.23 Cooperation with other public agencies.

(a) *Coordination of services with vocational education and Javits-Wagner-O'Day programs.* The State plan must assure that specific arrangements or

agreements are made for the coordination of services for any individual who is eligible for vocational rehabilitation services and is also eligible for services under the Carl D. Perkins Vocational and Applied Technology Education Act or the Javits-Wagner-O'Day Act.

(b) *Cooperation with other Federal, State, and local public agencies providing services related to the rehabilitation of individuals with disabilities.* (1) The State plan must assure that the State unit cooperates with other Federal, State, and local public agencies providing services related to the rehabilitation of individuals with disabilities, including, as appropriate, establishing interagency working groups or entering into other interagency cooperative agreements with, and using the services and facilities of—

(i) Federal agencies providing services related to the rehabilitation of individuals with disabilities, including the Social Security Administration, the Office of Workers' Compensation Programs of the Department of Labor, and the Department of Veterans Affairs; and

(ii) State and local public agencies providing services related to the rehabilitation of individuals with disabilities, including State and local public agencies administering the State's social services and financial assistance programs and other State programs for individuals with disabilities, such as the State's developmental disabilities program, veterans programs, health and mental health programs, education programs (including adult education, higher education, and vocational education programs), workers' compensation programs, job training and placement programs, and public employment offices.

(2) Interagency cooperation under paragraph (b)(1) of this section, to the extent practicable, must provide for training for staff of the agencies as to the availability, benefits of, and eligibility standards for vocational rehabilitation services.

(3) Interagency cooperation under paragraph (b)(1) of this section also must identify policies, practices, and procedures that can be coordinated among the agencies (particularly definitions, standards for eligibility, the joint sharing and use of evaluations and assessments, and procedures for making referrals); identify available resources and define the financial responsibility of each agency for paying for necessary services (consistent with State law) and procedures for resolving disputes between agencies; and include all additional components necessary to ensure meaningful cooperation and coordination.

(c) *Reciprocal referral services with a separate agency for individuals who are blind.* If there is a separate State unit for individuals who are blind, the State plan must assure that the two State units establish reciprocal referral services, use each other's services and facilities to the extent feasible, jointly plan activities to improve services in the State for individuals with multiple impairments, including visual impairments, and otherwise cooperate to provide more effective services, including, if appropriate, entering into a written cooperative agreement.

(Authority: Sections 101(a)(11) and 101(a)(22) of the Act; 29 U.S.C. 721(a)(11) and 721(a)(22))

§ 361.24 Coordination with the Statewide Independent Living Council.

The State plan must assure that the State unit will coordinate and establish working relationships with the Statewide Independent Living Council established under 34 CFR part 364 and with independent living centers within the State.

(Authority: Section 101(a)(33) of the Act; 29 U.S.C. 721(a)(33))

§ 361.25 Statewideness.

The State plan must assure that services provided under the State plan will be available in all political subdivisions of the State, unless a waiver of statewideness is requested and approved in accordance with § 361.26.

(Authority: Section 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

§ 361.26 Waiver of statewideness.

(a) *Availability.* The State unit may provide services in one or more political subdivisions of the State that increase services or expand the scope of services that are available statewide under the State plan if—

(1) The non-Federal share of the cost of these services is met from funds provided by a local public agency, including funds contributed to a local public agency by a private agency, organization, or individual;

(2) The services are likely to promote the vocational rehabilitation of substantially larger numbers of individuals with disabilities or of individuals with disabilities with particular types of impairments; and

(3) The State includes in its State plan, and the Secretary approves, a request for a waiver of the statewideness requirement, in accordance with the requirements of paragraph (b) of this section.

(b) *Request for waiver.* The request for a waiver of statewideness must—

(1) Identify the types of services to be provided;

(2) Contain a written assurance from the local public agency that it will make available to the State unit the non-Federal share of funds;

(3) Contain a written assurance that State unit approval will be obtained for each proposed service before it is put into effect; and

(4) Contain a written assurance that all other State plan requirements, including a State's order of selection requirements, will apply to all services approved under the waiver.

(Authority: Section 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

§ 361.27 Shared funding and administration of joint programs.

(a) In order to carry out a joint program involving shared funding and administrative responsibility with another State agency or a local public agency to provide services to individuals with disabilities, the designated State unit must request approval from the Secretary in the State plan.

(b) If a proposed joint program does not comply with the statewideness requirement in § 361.25, the State unit shall obtain a waiver of statewideness, in accordance with § 361.26.

(Authority: Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§ 361.28 Third-party cooperative arrangements involving funds from other public agencies.

(a) If the designated State unit enters into a third-party cooperative arrangement for providing or administering vocational rehabilitation services with another State agency or a local public agency that is furnishing part or all of the non-Federal share, the State plan must assure that—

(1) The services provided by the cooperating agency are not the customary or typical services provided by that agency but are new services that have a vocational rehabilitation focus or existing services that have been modified, adapted, expanded, or reconfigured to have a vocational rehabilitation focus;

(2) The services provided by the cooperating agency are only available to applicants for, or recipients of, services from the designated State unit;

(3) Program expenditures and staff providing services under the cooperative arrangement are under the administrative supervision of the designated State unit; and

(4) All State plan requirements, including a State's order of selection, will apply to all services provided under the cooperative program.

(b) If a third party cooperative agreement does not comply with the statewideness requirement in § 361.25, the State unit shall obtain a waiver of statewideness, in accordance with § 361.26.

(Authority: Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§ 361.29 Statewide studies and evaluations.

(a) *Statewide studies.* The State plan must assure that the State unit conducts continuing statewide studies to determine the current needs of individuals with disabilities within the State and the best methods to meet those needs. The continuing statewide studies, at a minimum, must include—

(1) A triennial comprehensive assessment, as part of the development of the State plan, of the rehabilitation needs of individuals with severe disabilities who reside in the State;

(2) A review of the effectiveness of outreach procedures used to identify and serve individuals with disabilities who are minorities and individuals with disabilities who are unserved and underserved by the vocational rehabilitation system;

(3) An annual analysis of the characteristics of individuals determined to be ineligible for services and the reasons for the ineligibility determinations; and

(4) A review of a broad variety of methods to provide, expand, and improve vocational rehabilitation services to individuals with the most severe disabilities, including individuals receiving supported employment services under 34 CFR Part 363.

(b) *Annual evaluation.* The State plan must assure that the State unit conducts an annual evaluation of the effectiveness of the State's vocational rehabilitation program in providing vocational rehabilitation and supported employment services, especially to individuals with the most severe disabilities. The annual evaluation must analyze the extent to which—

(1) The State has achieved the goals and priorities established in the State plan and annual amendments to the plan;

(2) The State has achieved the objectives of the strategic plan and revisions to the plan developed under Subpart D of this part;

(3) The State is in compliance with the evaluation standards and performance indicators established by the Secretary, pursuant to section 106 of the Act; and

(4) The State unit has adopted and is implementing procedures and activities to improve staff effectiveness and has made reasonable progress toward meeting the personnel standards established in accordance with § 361.18(c).

(c) *Reporting requirements.* (1) The State plan must describe annually those changes that have been adopted in policy, in the State plan and its amendments, and in the strategic plan and its amendments as a result of the statewide studies and the annual program evaluation.

(2) The State plan must contain an annual description of the methods used to expand and improve vocational rehabilitation services to individuals with the most severe disabilities, including the State unit's criteria for determining which individuals are individuals with the most severe disabilities.

(3) The State unit shall submit summaries or copies of the statewide studies and the annual evaluations as attachments to the State plan.

(d) *Role of the State Rehabilitation Advisory Council.* The State plan must assure that the State unit seeks the advice of the State Rehabilitation Advisory Council, if the State has a Council, regarding the continuing statewide studies and the annual evaluation and, at the discretion of the State agency, seeks assistance from the Council in the preparation and analysis of the studies and evaluation.

(Authority: Sections 101(a)(5) (A) and (B), 101(a)(9)(D), 101(a)(15) (B) and (D), 101(a)(19), and 105(c)(2) of the Act; 29 U.S.C. 721(a) (5), (9), (15), and (19) and 725(c)(2))

§ 361.30 Services to special groups of individuals with disabilities.

(a) *Civil employees of the United States.* The State plan must assure that vocational rehabilitation services are available to civil employees of the U.S. Government who are disabled in the line of duty, under the same terms and conditions applied to other individuals with disabilities.

(b) *Public safety officers.* (1) The State plan must assure that special consideration will be given to those individuals with disabilities whose disability arose from an impairment sustained in the line of duty while performing as a public safety officer and the immediate cause of that impairment was a criminal act, apparent criminal act, or a hazardous condition resulting directly from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities.

(2) For the purposes of paragraph (b) of this section, ''special consideration'' for States under an order of selection means that those public safety officers who meet the requirements of paragraph (b)(1) of this section must receive priority for services over other eligible individuals in the same priority category of the order of selection.

(3) For the purposes of paragraph (b) of this section, ''criminal act'' means any crime, including an act, omission, or possession under the laws of the United States, a State, or a unit of general local government that poses a substantial threat of personal injury, notwithstanding that by reason of age, insanity, intoxication, or otherwise, the person engaging in the act, omission, or possession was legally incapable of committing a crime.

(4) For the purposes of paragraph (b) of this section, ''public safety officer'' means a person serving the United States or a State or unit of local government, with or without compensation, in any activity pertaining to—

(i) The enforcement of the criminal laws, including highway patrol, or the maintenance of civil peace by the National Guard or the Armed Forces;

(ii) A correctional program, facility, or institution if the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees;

(iii) A court having criminal or juvenile delinquent jurisdiction if the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees; or

(iv) Firefighting, fire prevention, or emergency rescue missions.

(c) *American Indians.* (1) The State plan must assure that vocational rehabilitation services are provided to American Indians with disabilities residing in the State to the same extent that these services are provided to other significant groups of individuals with disabilities residing in the State.

(2) The State plan also must assure that the designated State unit continues to provide vocational rehabilitation services, including, as appropriate, services traditionally used by Indian tribes, to American Indians with disabilities who reside on reservations and are eligible for services by a special tribal program under 34 CFR part 371.

(Authority: Sections 7, 101(a)(13), 101(a)(20), and 130(b)(3) of the Act; 29 U.S.C. 706, 721(a)(13), 721(a)(20), and 750(b)(3))

§ 361.31 Utilization of community resources.

The State plan must assure that, in providing vocational rehabilitation services, public or other vocational or technical training programs or other appropriate community resources are used to the maximum extent feasible.

(Authority: Section 101(a)(12)(A) of the Act; 29 U.S.C. 721(a)(12)(A))

§ 361.32 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.

The State plan must assure that the State unit has the authority to enter into contracts with profitmaking organizations for the purpose of providing on-the-job training and related programs for individuals with disabilities under the Projects With Industry program, 34 CFR part 379, if it has been determined that they are better qualified to provide needed services than nonprofit agencies, organizations, or programs in the State.

(Authority: Section 101(a)(21) of the Act; 29 U.S.C. 721(a)(21))

§ 361.33 Utilization of community rehabilitation programs.

(a) The State plan must assure that the designated State unit uses community rehabilitation programs to the maximum extent feasible to provide vocational rehabilitation services in the most integrated settings possible, consistent with the informed choices of the individuals.

(b) The State plan must contain a description of—

(1) The capacity and effectiveness of community rehabilitation programs, including programs under the Javits-Wagner-O'Day Act, based on the utilization patterns of those programs; and

(2) The methods used to ensure the appropriate use of community rehabilitation programs, including methods for entering into agreements with the operators of those programs and for entering into cooperative agreements with private nonprofit vocational rehabilitation service providers.

(Authority: Sections 101(a)(5)(A), 101(a)(12)(B), 101(a)(15)(B), 101(a)(27), and 101(a)(28) of the Act; 29 U.S.C. 721(a) (5), (12), (15), (27), and (28))

§ 361.34 Supported employment plan.

(a) The State plan must assure that the State has an acceptable plan under 34 CFR part 363 that provides for the use of funds under that part to supplement funds under this part for the cost of services leading to supported employment.

(b) The supported employment plan, including annual revisions, must be submitted as a supplement to the State plan.

(Authority: Sections 101(a)(25) and 635(a) of the Act; 29 U.S.C. 721(a)(25))

§ 361.35 Strategic plan.

(a) The State plan must assure that the State—

(1) Has developed and implemented a strategic plan for expanding and improving vocational rehabilitation services for individuals with disabilities on a statewide basis in accordance with subpart D of this part; and

(2) Will use at least 1.5 percent of its allotment under this program for expansion and improvement activities in accordance with § 361.73(b).

(b) The strategic plan must be submitted as a supplement to the State plan.

(Authority: Sections 101(a)(34) and 120 of the Act; 29 U.S.C. 721(a)(34) and 740)

§ 361.36 [Reserved]

§ 361.37 Establishment and maintenance of information and referral resources.

(a) *General provisions.* The State plan must assure that—

(1) The designated State unit will establish and maintain information and referral programs adequate to ensure that individuals with disabilities within the State are given accurate information about State vocational rehabilitation services, independent living services, vocational rehabilitation services available from other agencies, organizations, and community rehabilitation programs, and, to the extent possible, other Federal and State services and programs that assist individuals with disabilities, including client assistance and other protection and advocacy programs;

(2) The State unit will refer individuals with disabilities to other appropriate Federal and State programs that might be of benefit to them; and

(3) The State unit will use existing information and referral systems in the State to the greatest extent possible.

(b) *Appropriate modes of communication.* The State plan further must assure that information and referral programs use appropriate modes of communication.

(c) *Special Circumstances.* If the State unit is operating under an order of selection for services, the State unit may elect to establish an expanded information and referral program that includes referral for job placements for those eligible individuals who are not in the priority category or categories to receive vocational rehabilitation services under the State's order of selection. If a State unit elects to establish this kind of program, the State plan must include—

(1) A description of how the expanded information and referral program will be established and how it will function, including the level of commitment of State unit staff and resources;

(2) An assurance that, in carrying out this program, the State unit will not use case services funds that are needed to provide vocational rehabilitation services under individualized written rehabilitation programs for eligible individuals in the priority category or categories receiving services under the State unit's order of selection; and

(3) A description of the method to be used by the State unit to track the results of the expanded information and referral program, including the State unit's procedures for identifying those eligible individuals who achieve an employment outcome through participation in the expanded information and referral program.

(Authority: Section 101(a)(22) of the Act; 29 U.S.C. 721(a)(22))

§ 361.38 Protection, use, and release of personal information.

(a) *General provisions.*

(1) The State plan must assure that the State agency and the State unit will adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that—

(i) Specific safeguards protect current and stored personal information;

(ii) All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

(iii) All applicants or their representatives are informed about the State unit need to collect personal information and the policies governing its use, including—

(A) Identification of the authority under which information is collected;

(B) Explanation of the principal purposes for which the State unit intends to use or release the information;

(C) Explanation of whether providing requested information to the State unit is mandatory or voluntary and the

effects of not providing requested information;

(D) Identification of those situations in which the State unit requires or does not require informed written consent of the individual before information may be released; and

(E) Identification of other agencies to which information is routinely released;

(iv) An explanation of State policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and

(v) These policies and procedures provide no fewer protections for individuals than State laws and regulations.

(2) The State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and shall establish policies and procedures governing access to records.

(b) *State program use.* All personal information in the possession of the State agency or the designated State unit must be used only for the purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) *Release to applicants and eligible individuals.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by an applicant or eligible individual, the State unit shall release all requested information in that individual's record of services to the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

(e) *Release to other programs or authorities.* (1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the State unit may release personal information to another agency or organization for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

(2) Medical or psychological information that the State unit determines may be harmful to the individual may be released if the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The State unit shall release personal information if required by Federal law or regulations.

(4) The State unit shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judicial officer.

(5) The State unit also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: Sections 12(c) and 101(a)(6)(A) of the Act; 29 U.S.C. 711(c) and 721(a)(6)(A))

§ 361.39 State-imposed requirements.

The State plan must assure that the designated State unit identifies upon request those regulations and policies relating to the administration or operation of its vocational rehabilitation program that are State-imposed, including any regulations or policy based on State interpretation of any Federal law, regulations, or guideline.

(Authority: Section 17 of the Act; 29 U.S.C. 716)

§ 361.40 Reports.

The State plan must assure that the State unit—

(a) Will submit reports in the form and detail and at the time required by the Secretary, including reports required under sections 13, 14, and 101(a)(10) of the Act; and

(b) Will comply with any requirements necessary to ensure the correctness and verification of those reports.

(Authority: Section 101(a)(10) of the Act; 29 U.S.C. 721(a)(10))

State Plan Content: Provision and Scope of Services

§ 361.41 Processing referrals and applications.

(a) *Referrals.* The State plan must assure that the designated State unit has established and implemented standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services. The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

(b) *Applications.* (1) The State plan must assure that once an individual has submitted an application for vocational rehabilitation services, an eligibility determination will be made within 60 days, unless—

(i) Exceptional and unforeseen circumstances beyond the control of the agency preclude a determination within 60 days and the individual is so notified and agrees that an extension of time is warranted; or

(ii) An extended evaluation is necessary, in accordance with § 361.42(d).

(2) An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate, has completed and signed an agency application form or has otherwise requested services and has provided

information necessary to initiate an assessment to determine eligibility and priority for services.

(3) The designated State unit shall ensure that its application forms are widely available throughout the State.

(Authority: Sections 101(a)(6)(A) and 102(a)(5)(A) of the Act; 29 U.S.C. 721(a)(6)(A) and 722(a)(5)(A))

§ 361.42 Assessment for determining eligibility and priority for services.

The State plan must assure that, in order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the State is operating under an order of selection), the designated State unit will conduct an assessment for determining eligibility and priority for services. The assessment must be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the following provisions:

(a) *Eligibility requirements. (1) Basic requirements.* The State plan must assure that the State unit's determination of an applicant's eligibility for vocational rehabilitation services is based only on the following requirements:

(i) A determination that the applicant has a physical or mental impairment, as determined by qualified personnel licensed or certified in accordance with State law or regulation.

(ii) A determination that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant.

(iii) A determination, in accordance with paragraph (a)(2) of this section, that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(iv) A determination that the applicant requires vocational rehabilitation services to prepare for, enter into, engage in, or retain gainful employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

(2) *Presumption of benefit.* The State plan must assure that the designated State unit will presume that an applicant who meets the eligibility requirements in paragraphs (a)(1) (i) and (ii) of this section can benefit in terms of an employment outcome unless it determines, based on clear and convincing evidence, that the applicant is incapable of benefitting in terms of an employment outcome from vocational rehabilitation services.

(3) *Limited presumption for Social Security beneficiaries.* The State plan must assure that, if an applicant has appropriate evidence, such as an award letter, that establishes the applicant's eligibility for Social Security benefits under Title II or Title XVI of the Social Security Act, the designated State unit will presume that the applicant—

(i) Meets the eligibility requirements in paragraphs (a)(1) (i) and (ii) of this section; and

(ii) Has a severe physical or mental impairment that seriously limits one or more functional capacities in terms of an employment outcome.

(b) *Prohibited factors.* The State plan must assure that—

(1) No duration of residence requirement is imposed that excludes from services any applicant who is present in the State;

(2) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability;

(3) The eligibility requirements are applied without regard to the age, gender, race, color, creed, or national origin of the applicant; and

(4) The eligibility requirements are applied without regard to the particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

(c) *Review and assessment of data for eligibility determination.* Except as provided in paragraph (d) of this section, the designated State unit shall base its determination of each of the basic eligibility requirements in paragraph (a) of this section on—

(1) A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, information used by the Social Security Administration, and determinations made by officials of other agencies; and

(2) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including assistive technology devices and services and worksite assessments, that are necessary to determine whether an individual is eligible.

(d) *Extended evaluation for individuals with severe disabilities.* (1) Prior to any determination that an individual with a severe disability is incapable of benefitting from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability, the State unit shall conduct an extended evaluation to determine whether or not there is clear and convincing evidence to support such a determination.

(2) During the extended evaluation period, which may not exceed 18 months, vocational rehabilitation services must be provided in the most integrated setting possible, consistent with the informed choice of the individual.

(3) During the extended evaluation period, the State unit shall develop a written plan for determining eligibility and for determining the nature and scope of services required to achieve an employment outcome. The State unit may provide during this period only those services that are necessary to make these two determinations.

(4) The State unit shall assess the individual's progress as frequently as necessary, but at least once every 90 days, during the extended evaluation period.

(5) The State unit shall terminate extended evaluation services at any point during the 18-month extended evaluation period if the State unit determines that—

(i) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or

(ii) There is clear and convincing evidence that the individual is incapable of benefitting from vocational rehabilitation services in terms of an employment outcome.

(e) *Data for determination of priority for services under an order of selection.* If the State unit is operating under an order of selection for services, as provided in § 361.36, the State unit shall base its priority assignments on—

(1) A review of the data that was developed under paragraphs (c) and (d) of this section to make the eligibility determination; and

(2) An assessment of additional data, to the extent necessary.

(Authority: Sections 7(22)(A)(ii), 7(22)(C)(iii), 101(a)(9)(A), 101(a)(14), 101(a)(31), 102(a)(1), 102(a)(2), 102(a)(3), and 102(a)(4) of the Act; 29 U.S.C. 706(22)(A)(ii), 706(22)(C)(iii), 721(a)(9)(a), 721(a)(14), 721(a)(31), 722(a)(1), 722(a)(2), 722(a)(3), and 722(a)(4))

Note: ''Clear and convincing evidence'' means that the designated State unit must have a high degree of certainty before it can conclude that an individual is incapable of benefitting from services in terms of an employment outcome. The ''clear and convincing'' standard constitutes the highest standard used in our civil system of law and

is to be individually applied on a case-by-case basis. The term ''clear'' means unequivocal. Given these requirements, a review of existing information generally would not provide clear and convincing evidence. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of ''clear and convincing evidence'' must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings.

Note: Under the statute and paragraph (a)(1)(iv) of § 361.42, an individual with a disability is not eligible for vocational rehabilitation services if the individual does not require the services to prepare for, enter, engage in, or retain gainful employment. The following examples illustrate how an individual with a disability may or may not meet this final eligibility criterion. The examples are purely illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment. State units shall determine eligibility for vocational rehabilitation services on a case-by-case basis, taking into account those individual circumstances relating to an individual's strengths, resources, priorities, concerns, abilities, and capabilities.

Example: An individual with a disability who is not currently employed and is unable to obtain employment consistent with the individual's abilities and capabilities would likely meet this eligibility criterion.

Example: An individual with a disability who is already employed in a setting consistent with the individual's abilities and capabilities, but who desires to change jobs for reasons unrelated to the individual's disability, would likely not meet this eligibility criterion.

Example: An individual with a disability who is already employed, but not in a setting consistent with the individual's abilities and capabilities, and who desires to obtain new employment that is consistent with his or her abilities and capabilities, would meet this eligibility criterion.

Example: An individual with a disability who is currently employed, but is in jeopardy of losing that employment due to disability-related factors (e.g., the individual's disability is progressive and results in additional functional limitations), would meet this eligibility criterion.

Example: An individual with a disability who was previously employed in a setting consistent with the individual's abilities and capabilities, who lost that employment for reasons unrelated to the disability, and whose job skills are transferable would likely not meet this eligibility criterion.

Example: An individual with a disability whose disability is of a temporary nature (e.g., an allowed Social Security beneficiary who has been assigned a diaried date (date of a follow-up review to determine whether the individual has recovered medically) because his or her disability is expected to improve within 12 months) might not meet this eligibility criterion.

§ 361.43 Procedures for ineligibility determination.

The State plan must assure that if the State unit determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized written rehabilitation program is no longer eligible for services, the State unit shall—

(a) Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;

(b) Inform the individual in writing, or by appropriate modes of communication, of the ineligibility determination, including the reasons for that determination, the requirements under this section, and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of a determination by the rehabilitation counselor or coordinator in accordance with § 361.57;

(c) Provide the individual with a description of services available from a client assistance program established under 34 CFR part 370 and information on how to contact that program; and

(d) Review the ineligibility determination—

(1) Within 12 months, unless the individual has refused the review, is no longer present in the State, or the individual's whereabouts are unknown; or

(2) In the case of an ineligibility determination based on a determination that the individual is incapable of achieving an employment outcome, within 12 months in accordance with paragraph (d)(1) of this section and annually thereafter if requested by the individual or, if appropriate, by the individual's representative.

(Authority: Sections 101(a)(9)(D), 102(a)(6), and 102(c) of the Act; 29 U.S.C. 721(a)(9), 722(a)(6), and 722(c))

§ 361.44 Closure without eligibility determination.

The State plan must assure that the State unit may not close an applicant's case prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete an assessment for determining eligibility and priority for services, and the State unit has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

(Authority: Sections 12(c) and 101(a)(6)(A) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.45 Development of the individualized written rehabilitation program.

(a) *Purpose.* The State plan must assure that the State unit conducts an assessment for determining vocational rehabilitation needs for each eligible individual or, if the State is operating under an order of selection, for each eligible individual to whom the State is able to provide services. The purpose of this assessment is to determine the long-term vocational goal, intermediate rehabilitation objectives, and the nature and scope of vocational rehabilitation services to be included in the IWRP, which must be designed to achieve an employment outcome that is consistent with the individual's unique strengths, priorities, concerns, abilities, capabilities, and career interests.

(b) *Procedural requirements.* The State plan must assure that—

(1) The IWRP is developed jointly, agreed to, and signed by the vocational rehabilitation counselor or coordinator and the individual or, as appropriate, the individual's representative within the framework of a counseling and guidance relationship;

(2) The State unit has established and implemented standards for the prompt development of IWRPs for the individuals identified under paragraph (a) of this section, including timelines that take into consideration the needs of the individual;

(3) The State unit advises each individual or, as appropriate, the individual's representative of all State unit procedures and requirements affecting the development and review of an IWRP, including the availability of appropriate modes of communication;

(4) In developing an IWRP for a transitioning student, the State unit considers the student's individualized education program;

(5) The State unit reviews the IWRP with the individual or, as appropriate, the individual's representative as often as necessary, but at least once each year to assess the individual's progress in meeting the objectives identified in the IWRP;

(6) The State unit incorporates into the IWRP any revisions that are necessary to reflect changes in the individual's vocational goal, intermediate objectives, or vocational rehabilitation needs, after obtaining the agreement and signature of the individual or, as appropriate, the

agreement and signature of the individual's representative; and

(7) The State unit promptly provides each individual or, as appropriate, the individual's representative, a copy of the IWRP and its amendments in the native language, or appropriate mode of communication, of the individual or, as appropriate, of the individual's representative.

(c) Data for preparing the IWRP.

(1) *Preparation without comprehensive assessment.* To the extent possible, the vocational goal, intermediate objectives, and the nature and scope of rehabilitation services to be included in the individual's IWRP must be determined based on the data used for the assessment of eligibility and priority for services under § 361.42.

(2) *Preparation based on comprehensive assessment.*

(i) If additional data are necessary to prepare the IWRP, the designated State unit shall conduct a comprehensive assessment of the unique strengths, resources, priorities, interests, and needs, including the need for supported employment services of an eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual.

(ii) The comprehensive assessment must be limited to information that is necessary to identify the rehabilitation needs of the individual and develop the IWRP and may, to the extent needed, include—

(A) An analysis of pertinent medical, psychiatric, psychological, neuropsychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, and related functional limitations, that affect the employment and rehabilitation needs of the individual;

(B) An analysis of the individual's personality, career interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities;

(C) An appraisal of the individual's patterns of work behavior and services needed to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance; and

(D) An assessment, through provision of rehabilitation technology services, of the individual's capacities to perform in a work environment, including in an integrated setting, to the maximum extent feasible and consistent with the individual's informed choice.

(iii) In preparing a comprehensive assessment, the State unit shall use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information, including information that is provided by the individual, the family of the individual, and education agencies.

(Authority: Sections 7(22)(B), 102(b)(1)(A), and 102(b)(2); 29 U.S.C. 706(5), 721(a)(9), 722, and 723(a)(1))

§ 361.46 Content of the individualized written rehabilitation program.

(a) *General requirements.* The State plan must assure that each IWRP includes, as appropriate, statements concerning—

(1) The specific long-term vocational goal, which must be based on the assessment for determining vocational rehabilitation needs, including the individual's career interests, and must be, to the extent appropriate and consistent with the informed choice of the individual, in an integrated setting;

(2) The specific and measurable intermediate rehabilitation objectives related to the attainment of the long-term vocational goal, based on the assessment for determining vocational rehabilitation needs and consistent with the informed choice of the individual;

(3) The specific rehabilitation services under § 361.48 to be provided to achieve the established intermediate rehabilitation objectives, including, if appropriate, rehabilitation technology services and on-the-job and related personal assistance services;

(4) The projected dates for the initiation of each vocational rehabilitation service, the anticipated duration of each service, and the projected date for the achievement of the individual's vocational goal;

(5) A procedure and schedule for periodic review and evaluation of progress toward achieving intermediate rehabilitation objectives based upon objective criteria and a record of these reviews and evaluations;

(6) How, in the words of the individual or, as appropriate, in the words of the individual's representative, the individual was—

(i) Informed about and involved in choosing among alternative goals, objectives, services, providers, and methods used to procure or provide services; and

(ii) Provided information regarding the availability and qualifications of alternative providers of services;

(7) The terms and conditions for the provision of vocational rehabilitation services, including—

(i) The responsibilities of the individual in implementing the IWRP;

(ii) The extent of the individual's participation in the cost of services;

(iii) The extent to which goods and services will be provided in the most integrated settings possible, consistent with the informed choices of the individual;

(iv) The extent to which comparable services and benefits are available to the individual under any other program; and

(v) The entity or entities that will provide the services and the process used to provide or procure the services;

(8) The rights of the individual under this part and the means by which the individual may express and seek remedy for any dissatisfaction, including the opportunity for a review of rehabilitation counselor or coordinator determinations under § 361.57;

(9) The availability of a client assistance program established under 34 CFR part 370; and

(10) The basis on which the individual has been determined to have achieved an employment outcome.

(b) *Supported employment placements.* The State plan must assure that the IWRP for individuals with the most severe disabilities for whom a vocational goal in a supported employment setting has been determined to be appropriate will also contain—

(1) A description of the supported employment services to be provided by the State unit; and

(2) A description of the extended services needed and identification of the source of extended services or, in the event that identification of the source is not possible at the time the IWRP is developed, a statement explaining the basis for concluding that there is a reasonable expectation that services will become available.

(c) *Post-employment services.* The State plan must assure that the IWRP for each individual contains statements concerning—

(1) The expected need for post-employment services, based on an assessment during the development of the IWRP;

(2) A reassessment of the need for post-employment services prior to the determination that the individual has achieved an employment outcome;

(3) A description of the terms and conditions for the provision of any post-employment services, including the anticipated duration of those services, subsequent to the achievement of an employment outcome by the individual; and

(4) If appropriate, a statement of how post-employment services will be provided or arranged through cooperative agreements with other service providers.

(d) *Coordination of services for transitioning students.* The State plan must assure that the IWRP for a transitioning student is coordinated with the individualized education program (IEP) for that individual in terms of the goals, objectives, and services identified in the IEP.

(e) *Ineligibility.* The State plan must assure that the decision that an individual is not capable of achieving an employment outcome and is no longer eligible to receive services under an IWRP is made in accordance with the requirements in § 361.43. The decision, and the reasons on which the decision was based, must be included as an amendment to the IWRP.

(Authority: Sections 101(a)(9), 102(b)(1), 102(c), and 635(b)(6) of the Act; 29 U.S.C. 721(a)(9), 722, and 795n)

§ 361.47 Record of services.

The State plan must assure that the designated State unit maintains for each applicant or eligible individual a record of services that includes, to the extent pertinent, the following documentation:

(a) If an applicant has been determined to be an eligible individual, documentation supporting that determination in accordance with the requirements in § 361.42.

(b) If an applicant has been determined to be ineligible, documentation supporting that determination in accordance with the requirements of § 361.43.

(c) Documentation supporting the determination that an individual has a severe disability or a most severe disability.

(d) If an individual with a severe disability requires an extended evaluation in order to determine whether the individual is an eligible individual, documentation supporting the need for an extended evaluation, documentation supporting the periodic assessments conducted during the extended evaluation, and the written plan developed during the extended evaluation, in accordance with the requirements in § 361.42(d).

(e) The IWRP, and any amendments to the IWRP, containing the information required under § 361.46.

(f) In accordance with § 361.45(a), documentation supporting the development of the long-term vocational goal, intermediate rehabilitation objectives, and nature and scope of services included in the individual's IWRP and, for individuals who are transitioning students, in the individual's IEP.

(g) In the event that an individual's IWRP provides for services or a job placement in a non-integrated setting, a justification for that non-integrated setting.

(h) Documentation of the reason for terminating services to an individual and, if an individual has achieved an employment outcome, the basis on which the requirements of § 361.56 were determined to be met.

(i) Documentation concerning any action and decision resulting from a request by an individual for review of a rehabilitation counselor or coordinator determination under § 361.57.

(Authority: Sections 101(a)(6) and 101(a)(9) of the Act; 29 U.S.C. 721(a)(6) and 721(a)(9))

§ 361.48 Scope of vocational rehabilitation services for individuals with disabilities.

(a) The State plan must assure that, as appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, the following vocational rehabilitation services are available:

(1) Assessment for determining eligibility and priority for services in accordance with § 361.42.

(2) Assessment for determining vocational rehabilitation needs in accordance with § 361.45.

(3) Vocational counseling and guidance.

(4) Referral and other services necessary to help applicants and eligible individuals secure needed services from other agencies and to advise those individuals about client assistance programs established under 34 CFR part 370.

(5) Physical and mental restoration services in accordance with the definition of that term in § 361.5(b)(35).

(6) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the State unit to secure grant assistance in whole or in part from other sources to pay for that training.

(7) Maintenance, in accordance with the definition of that term in § 361.5(b)(31).

(8) Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the definition of that term in § 361.5(b)(50).

(9) Vocational rehabilitation services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(10) Interpreter services for individuals who are deaf and tactile interpreting services for individuals who are deaf-blind.

(11) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.

(12) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate public service employment.

(13) Job search and placement assistance and job retention services.

(14) Supported employment services in accordance with the definition of that term in § 361.5(b)(46).

(15) Personal assistance services in accordance with the definition of that term in § 361.5(b)(34).

(16) Post-employment services in accordance with the definition of that term in § 361.5(b)(37).

(17) Occupational licenses, tools, equipment, initial stocks, and supplies.

(18) Rehabilitation technology in accordance with the definition of that term in § 361.5(b)(39), including vehicular modification, telecommunications, sensory, and other technological aids and devices.

(19) Transition services in accordance with the definition of that term in § 361.5(b)(47).

(20) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

(b) The State plan also must describe annually—

(1) The manner in which a broad range of rehabilitation technology services will be provided at each stage of the rehabilitation process and on a statewide basis;

(2) The training that will be provided to vocational rehabilitation counselors, client assistance personnel, and other related services personnel on the provision of rehabilitation technology services; and

(3) The manner in which on-the-job and other related personal assistance services will be provided to assist individuals while they are receiving vocational rehabilitation services, including a description of strategies for developing statewide capacity to provide those services to an increasing number of individuals to improve their employment potential.

(Authority: Sections 101(a)(5)(C), 101(a)(26), and 103(a) of the Act; 29 U.S.C. 721(a)(5)(C), 721(a)(26), and 723(a))

§ 361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities.

(a) The State plan may also provide for the following vocational rehabilitation services for the benefit of groups of individuals with disabilities:

(1) The establishment, development, or improvement of a public or other nonprofit community rehabilitation program that is used to provide services that promote integration and competitive employment, including under special circumstances, the construction of a facility for a public or nonprofit community rehabilitation program. Examples of ''special circumstances'' include the destruction by natural disaster of the only available center serving an area or a State determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are currently able to provide services to individuals.

(2) Telecommunications systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities, including telephone, television, satellite, tactile-vibratory devices, and similar systems, as appropriate.

(3) Special services to provide recorded material for individuals who are blind, captioned television, films or video cassettes for individuals who are deaf, tactile materials for individuals who are deaf-blind, and other special services that provide information through tactile, vibratory, auditory, and visual media.

(4) Technical assistance and support services, such as job site modification and other reasonable accommodations, to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990 and that are seeking to employ individuals with disabilities.

(5) In the case of small business enterprises operated by individuals with the most severe disabilities under the supervision of the State unit, including enterprises established under the Randolph-Sheppard program, management services and supervision, initial stocks and supplies, and initial operating expenses, in accordance with the following requirements:

(i) ''Management services and supervision'' includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by individuals with the most severe disabilities. ''Management services and supervision'' may be provided throughout the operation of the small business enterprise.

(ii) ''Initial stocks and supplies'' includes those items necessary to the establishment of a new business enterprise during the initial establishment period, which shall not exceed six months.

(iii) Costs of establishing a small business enterprise may include operational costs during the initial establishment period, which shall not exceed six months.

(iv) If the State plan provides for these services, it must contain an assurance that only individuals with the most severe disabilities will be selected to participate in this supervised program.

(v) If the State plan provides for these services and the State unit chooses to set aside funds from the proceeds of the operation of the small business enterprises, the State plan also must assure that the State unit maintains a description of the methods used in setting aside funds and the purposes for which funds are set aside. Funds may be used only for small business enterprises purposes, and benefits that are provided to operators from set-aside funds must be provided on an equitable basis.

(6) Other services that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the IWRP of any one individual. Examples of those other services might include the purchase or lease of a bus to provide transportation to a group of applicants or eligible individuals or the purchase of equipment or instructional materials that would benefit a group of applicants or eligible individuals.

(b) If the State plan provides for vocational rehabilitation services for groups of individuals, the State plan must assure that the designated State unit maintains information to ensure the proper and efficient administration of those services in the form and detail and at the time required by the Secretary, including the types of services provided, the costs of those services, and, to the extent feasible, estimates of the numbers of individuals benefitting from those services.

(Authority: Section 103(b) of the Act; 29 U.S.C. 711(c), 723(b), 721(a)(6))

§ 361.50 Written policies governing the provision of services.

The State plan must assure that the State unit develops and maintains written policies covering the nature and scope of each of the vocational rehabilitation services specified in § 361.48 and § 361.49 and the criteria under which each service is provided. The policies must ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual's IWRP. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome. The policies must be developed in accordance with the following provisions:

(a) *Out-of-State services.* (1) The State unit may establish a preference for in-State services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an out-of-State service at a higher cost than an in-State service, if either service would meet the individual's rehabilitation needs, the designated State unit is not responsible for those costs in excess of the cost of the in-State service.

(2) The State unit may not establish an absolute prohibition on the provision of out-of-State services.

(b) *Payment for services.* (1) The State unit shall establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

(2) The State unit may establish a reasonable fee schedule designed to ensure the lowest reasonable cost to the program for each service, provided that the schedule is—

(i) Not so low as to effectively deny an individual a necessary service; and

(ii) Not absolute and permits exceptions so that individual needs can be addressed.

(3) The State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.

(c) *Duration of services.* (1) The State unit may establish reasonable time periods for the provision of services provided that the time periods are—

(i) Not so short as to effectively deny an individual a necessary service; and

(ii) Not absolute and permit exceptions so that individual needs can be addressed.

(2) The State unit may not establish absolute time limits on the provision of specific services or on the provision of services to an individual. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual's IWRP.

(d) *Authorization of services.* The State unit shall establish policies related to the timely authorization of services, including conditions under which verbal authorization can be given.

(Authority: Sections 12(c), 12(e)(2)(A), and 101(a)(6) of the Act and 29 U.S.C. 711(c), 711(e)(2)(A), and 721(a)(6))

§ 361.51 Written standards for facilities and providers of services.

The State plan must assure that the designated State unit establishes, maintains, makes available to the public, and implements written minimum standards for the various types of facilities and providers of services used by the State unit in providing vocational rehabilitation services, in accordance with the following requirements:

(a) *Accessibility of facilities.* Any facility in which vocational rehabilitation services are provided must be accessible to individuals receiving services and must comply with the requirements of the Architectural Barriers Act of 1968, the Uniform Accessibility Standards and their implementing regulations in 41 CFR part 101, subpart 101–19.6, the American National Standards Institute, No. A117.1–1986, the Americans with Disabilities Act of 1990, and section 504 of the Act.

(b) *Personnel standards.* (1) *Qualified personnel.* Providers of vocational rehabilitation services shall use qualified personnel, in accordance with any applicable national or State-approved or recognized certification, licensing, registration or other comparable requirements (including State personnel requirements) that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services.

(2) *Affirmative action.* Providers of vocational rehabilitation services shall take affirmative action to employ and advance in employment qualified individuals with disabilities.

(3) *Special communication needs personnel.* Providers of vocational rehabilitation services shall—

(i) Include among their personnel, or obtain the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability; and

(ii) Ensure that appropriate modes of communication for all applicants and eligible individuals are used.

(c) *Fraud, waste, and abuse.* Providers of vocational rehabilitation services shall have adequate and appropriate policies and procedures to prevent fraud, waste, and abuse.

(Authority: Sections 12(e)(2) (B), (D), and (E) and 101(a)(6)(B) of the Act; 29 U.S.C. 711(e) and 721(a)(6)(B))

§ 361.52 Opportunity to make informed choices regarding the selection of services and providers.

The State plan must describe the manner in which the State unit will provide each applicant, including individuals who are receiving services during an extended evaluation, and each eligible individual the opportunity to make informed choices throughout the vocational rehabilitation process in accordance with the following requirements:

(a) Each State unit, in consultation with its State Rehabilitation Advisory Council, if it has one, shall develop and implement policies and procedures that enable each individual to make an informed choice with regard to the selection of a long-term vocational goal, intermediate rehabilitation objectives, vocational rehabilitation services, including assessment services, and service providers.

(b) In developing an individual's IWRP, the State unit shall provide the individual, or assist the individual in acquiring, information necessary to make an informed choice about the specific services, including the providers of those services, that are needed to achieve the individual's vocational goal. This information must include, at a minimum, information relating to the cost, accessibility, and duration of potential services, the level of consumer satisfaction with those services, the qualifications of potential service providers, the types of services offered by those providers, and the degree to which services are provided in integrated settings.

(c) In providing, or assisting the individual in acquiring, the information required under paragraph (b) of this section, the State unit may use, but is not limited to, the following methods or sources of information:

(1) State or regional lists of services and service providers.

(2) Periodic consumer satisfaction surveys and reports.

(3) Referrals to other consumers, local consumer groups, or disability advisory councils qualified to discuss the services or service providers.

(4) Relevant accreditation, certification, or other information relating to the qualifications of service providers.

(Authority: Sections 12(e)(1) and 12(e)(2)(C) of the Act; 29 U.S.C. 711(e))

§ 361.53 Availability of comparable services and benefits.

(a) The State plan must assure that—

(1) Prior to providing any vocational rehabilitation services to an eligible individual, or to members of the individual's family, except those services listed in paragraph (b) of this section, the State unit shall determine whether comparable services and benefits exist under any other program and whether those services and benefits are available to the individual;

(2) If comparable services or benefits exist under any other program and are available to the eligible individual within a reasonable period of time so that the intermediate rehabilitation objectives of the individual's IWRP can be met, the State unit shall use those comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation services; and

(3) If comparable services or benefits exist under any other program, but are not available to the individual within a reasonable period of time, the State unit shall provide vocational rehabilitation services until those comparable services and benefits become available.

(b) A prior determination of the availability of comparable services and benefits is not required in connection with the provision of any of the following services:

(1) Assessment for determining eligibility and priority for services.

(2) Assessment for determining vocational rehabilitation needs.

(3) Vocational counseling, guidance, and referral services.

(4) Vocational and other training services, such as personal and vocational adjustment training, books (including alternative format books accessible by computer and taped books), tools, and other training materials in accordance with § 361.48(a)(6).

(5) Placement services.

(6) Rehabilitation technology.

(7) Post-employment services consisting of the services listed under paragraphs (b) (1) through (6) of this section.

(c) The requirements of paragraph (a) of this section also do not apply if—

(1) The determination of the availability of comparable services and benefits under any other program would delay the provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional; or

(2) An immediate job placement would be lost due to a delay in the

provision of comparable services and benefits.

(Authority: Section 101(a)(8) of the Act; 29 U.S.C. 721(a)(8))

§ 361.54 Participation of individuals in cost of services based on financial need.

(a) *No Federal requirement.* There is no Federal requirement that the financial need of individuals be considered in the provision of vocational rehabilitation services.

(b) *State unit requirements.* (1) The State unit may choose to consider the financial need of eligible individuals or individuals who are receiving services during an extended evaluation for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, other than those services identified in paragraph (b)(3) of this section.

(2) If the State unit chooses to consider financial need—

(i) It shall maintain written policies covering the determination of financial need;

(ii) The State plan must specify the types of vocational rehabilitation services for which the unit has established a financial needs test;

(iii) The policies must be applied uniformly to all individuals in similar circumstances;

(iv) The policies may require different levels of need for different geographic regions in the State, but must be applied uniformly to all individuals within each geographic region; and

(v) The policies must ensure that the level of an individual's participation in the cost of vocational rehabilitation services is—

(A) Reasonable;

(B) Based on the individual's financial need; and

(C) Not so high as to effectively deny the individual a necessary service.

(3) The State plan must assure that no financial needs test is applied and no financial participation is required as a condition for furnishing the following vocational rehabilitation services:

(i) Assessment for determining eligibility and priority for services, except those non-assessment services that are provided during an extended evaluation for an individual with a severe disability under § 361.42(d).

(ii) Assessment for determining vocational rehabilitation needs.

(iii) Vocational counseling, guidance, and referral services.

(iv) Placement services.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.55 Review of extended employment in community rehabilitation programs or other employment under section 14(c) of the Fair Labor Standards Act.

The State plan must assure that the State unit—

(a) Reviews and re-evaluates at least annually the status of each individual determined by the State unit to have achieved an employment outcome in an extended employment setting in a community rehabilitation program or other employment setting in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act. This review or re-evaluation must include input from the individual or, in an appropriate case, the individual's representative to determine the interests, priorities, and needs of the individual for employment in, or training for, competitive employment in an integrated setting in the labor market;

(b) Makes maximum effort, including the identification of vocational rehabilitation services, reasonable accommodations, and other support services, to enable the eligible individual to benefit from training in, or to be placed in employment in, an integrated setting; and

(c) Provides services designed to promote movement from extended employment to integrated employment, including supported employment, independent living, and community participation.

(Authority: Section 101(a)(16) of the Act; 29 U.S.C. 721(a)(16))

§ 361.56 Individuals determined to have achieved an employment outcome.

The State plan must assure that an individual is determined to have achieved an employment outcome only if the following requirements are met:

(a) The provision of services under the individual's IWRP has contributed to the achievement of the employment outcome.

(b) The employment outcome is consistent with the individual's abilities, capabilities, interests, and informed choice.

(c) The employment outcome is in the most integrated setting possible, consistent with the individual's informed choice.

(d) The individual has maintained the employment outcome for the duration of the probationary period established by the employer for its employees or, if the employer does not have an established probationary period, for a period of at least 90 days.

(e) The individual and the rehabilitation counselor or coordinator consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

(Authority: Sections 12(c), 101(a)(6), and 106(a)(2) of the Act; 29 U.S.C. 711(c), 721(a)(6), and 726(a)(2))

§ 361.57 Review of rehabilitation counselor or coordinator determinations.

The State plan must contain procedures established by the director of the designated State unit to ensure that any applicant or eligible individual who is dissatisfied with any determinations made by a rehabilitation counselor or coordinator concerning the furnishing or denial of services may request timely review of those determinations. The procedures established by the director of the State unit must be in accordance with the following provisions:

(a) *Informal resolution.* The State unit may establish an informal process to resolve a request for review without conducting a formal hearing. However, a State's informal process must be conducted and concluded within the time period established under paragraph (c)(1) of this section for holding a formal hearing. If informal resolution is not successful, a formal hearing must be conducted by the end of this same period, unless the parties jointly agree to a delay.

(b) *Formal hearing procedures.* Except as provided in paragraph (e) of this section, the State unit shall establish formal review procedures that provide that—

(1) A hearing by an impartial hearing officer, selected in accordance with paragraph (d) of this section, must be held within the time period established under paragraph (c)(1) of this section, unless informal resolution was achieved prior to the expiration of the time period or the parties jointly agreed to a delay;

(2) The State unit may not institute a suspension, reduction, or termination of services being provided under an IWRP pending a final determination of the formal hearing under this paragraph or informal resolution under paragraph (a) of this section, unless the individual or, in an appropriate case, the individual's representative so requests or the agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual;

(3) The individual or, if appropriate, the individual's representative shall be afforded an opportunity to present additional evidence, information, and witnesses to the impartial hearing officer, to be represented by counsel or other appropriate advocate, and to examine all witnesses and other

relevant sources of information and evidence;

(4) The impartial hearing officer shall make a decision based on the provisions of the approved State plan, the Act, and Federal and State vocational rehabilitation regulations and policies and shall provide to the individual or, if appropriate, the individual's representative and to the director of the designated State unit a full written report of the findings and grounds for the decision within the time period established under paragraph (c)(2) of this section;

(5) If the director of the designated State unit decides to review the decision of the impartial hearing officer, the director shall notify in writing the individual or, if appropriate, the individual's representative of that intent within 20 days of the mailing of the impartial hearing officer's decision;

(6) If the director of the designated State unit fails to provide the notice required by paragraph (b)(5) of this section, the impartial hearing officer's decision becomes a final decision;

(7) The decision of the director of the designated State unit to review any impartial hearing officer's decision must be based on standards of review contained in written State unit policy;

(8) If the director of the designated State unit decides to review the decision of the impartial hearing officer, the director shall provide the individual or, if appropriate, the individual's representative an opportunity to submit additional evidence and information relevant to the final decision;

(9) The director may not overturn or modify a decision, or part of a decision, of an impartial hearing officer that supports the position of the individual unless the director concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous because it is contrary to the approved State plan, the Act, or Federal or State vocational rehabilitation regulations or policy;

(10) The director of the designated State unit shall make a final decision and provide a full report in writing of the decision, and of the findings and grounds for the decision, to the individual or, if appropriate, the individual's representative within the time period established under paragraph (c)(3) of this section;

(11) The director of the designated State unit may not delegate responsibility to make any final decision to any other officer or employee of the designated State unit; and

(12) Except for the time limitations established in paragraphs (b)(5) and (c)(1) of this section, each State's review procedures may provide for reasonable time extensions for good cause shown at the request of a party or at the request of both parties.

(c) *Timelines.* Each State unit, in consultation with its State Rehabilitation Advisory Council, if it has one, shall develop and implement reasonable timelines for the prompt handling of appeals, including, at a minimum, timelines for—

(1) Holding a formal hearing after an individual's request for review;

(2) Rendering the decision of the impartial hearing officer after completion of the formal hearing; and

(3) Rendering the final decision of the director of the designated State unit after providing notice of intent to review the decision of the impartial hearing officer in accordance with paragraph (b)(5) of this section.

(d) *Selection of impartial hearing officers.* Except as provided in paragraph (e) of this section, the impartial hearing officer for a particular case must be selected—

(1) From among the pool of persons qualified to be an impartial hearing officer, as defined in § 361.5(b)(22), who are identified by the State unit, if the State unit is an independent commission, or jointly by the designated State unit and the State Rehabilitation Advisory Council, if the State has a Council; and

(2)(i) On a random basis; or

(ii) By agreement between the director of the designated State unit and the individual or, if appropriate, the individual's representative.

(e) *State fair hearing board.* The provisions of paragraphs (b), (c), and (d) of this section are not applicable if the State has a fair hearing board that was established before January 1, 1985, that is authorized under State law to review rehabilitation counselor or coordinator determinations and to carry out the responsibilities of the director of the designated State unit under this section.

(f) *Informing affected individuals.* The State unit shall inform, through appropriate modes of communication, all applicants and eligible individuals of—

(1) Their right to review under this section, including the names and addresses of individuals with whom appeals may be filed; and

(2) The manner in which an impartial hearing officer will be selected consistent with the requirements of paragraph (d) of this section.

(g) *Data collection.* The director of the designated State unit shall collect and submit, at a minimum, the following data to the Secretary for inclusion each year in the annual report to Congress under section 13 of the Act:

(1) The number of appeals to impartial hearing officers and the State director, including the type of complaints and the issues involved.

(2) The number of decisions by the State director reversing in whole or in part a decision of the impartial hearing officer.

(3) The number of decisions affirming the position of the dissatisfied individual assisted through the client assistance program, when that assistance is known to the State unit.

(Authority: Sections 102(b) and 102(d) of the Act; 29 U.S.C. 722(b) and 722(d))

Subpart C—Financing of State Vocational Rehabilitation Programs

§ 361.60 Matching requirements.

(a) *Federal share.* (1) *General.* Except as provided in paragraphs (a)(2) and (a)(3) of this section, the Federal share for expenditures made by the State unit under the State plan, including expenditures for the provision of vocational rehabilitation services, administration of the State plan, and the development and implementation of the strategic plan, is 78.7 percent.

(2) *Construction projects.* The Federal share for expenditures made for the construction of a facility for community rehabilitation program purposes may not be more than 50 percent of the total cost of the project.

(3) *Innovation and expansion grant activities.* The Federal share for the cost of innovation and expansion grant activities funded by appropriations under Part C of Title I of the Act is 90 percent.

(b) *Non-Federal share.* (1) *General.* Except as provided in paragraphs (b)(2) and (b)(3) of this section, expenditures made under the State plan to meet the non-Federal share under this section must be consistent with the provisions of 34 CFR 80.24.

(2) *Third party in-kind contributions.* Third party in-kind contributions specified in 34 CFR 80.24(a)(2) may not be used to meet the non-Federal share under this section.

(3) *Contributions by private entities.* Expenditures made from contributions by private organizations, agencies, or individuals that are deposited in the account of the State agency or sole local agency in accordance with State law and that are earmarked, under a condition imposed by the contributor, may be used as part of the non-Federal share under this section if the following requirements are met:

(i) The funds are earmarked for meeting in whole or in part the State's

share for establishing a community rehabilitation program or constructing a particular facility for community rehabilitation program purposes.

(ii) If the funds are earmarked for any other purpose under the State plan, the expenditures do not benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest. The Secretary does not consider a donor's receipt from the State unit of a grant, subgrant, or contract with funds allotted under this part to be a benefit for the purposes of this paragraph if the grant, subgrant, or contract is awarded under the State's regular competitive procedures.

(Authority: Sections 7(7), 101(a)(3), and 104 of the Act; 29 U.S.C. 706(7), 721(a)(3) and 724)

Note: The Secretary notes that contributions may be earmarked in accordance with paragraph (b)(3)(ii) of this section for providing particular services (e.g., rehabilitation technology services); serving individuals with certain types of disabilities (e.g., individuals who are blind), consistent with the State's order of selection, if applicable; providing services to special groups that State or Federal law permits to be targeted for services (e.g., transitioning students), consistent with the State's order of selection, if applicable; or carrying out particular types of administrative activities permissible under State law. Contributions also may be restricted to particular geographic areas to increase services or expand the scope of services that are available statewide under the State plan. However, if a contribution is earmarked for a restricted geographic area, expenditures from that contribution may be used to meet the non-Federal share requirement only if the State unit requests and the Secretary approves a waiver of statewideness, in accordance with § 361.26.

§ 361.61 Limitation on use of funds for construction expenditures.

No more than 10 percent of a State's allotment for any fiscal year under section 110 of the Act may be spent on the construction of facilities for community rehabilitation program purposes.

(Authority: Section 101(a)(17)(A) of the Act; 29 U.S.C. 721(a)(17)(A))

§ 361.62 Maintenance of effort requirements.

(a) *General requirements.* (1) The Secretary reduces the amount otherwise payable to a State for a fiscal year by the amount by which the total expenditures from non-Federal sources under the State plan for the previous fiscal year were less than the total of those expenditures for the fiscal year two years prior to the previous fiscal year. For example, for fiscal year 1996, a State's maintenance of effort level is based on the amount of its expenditures from non-Federal sources for fiscal year 1994. Thus, if the State's non-Federal expenditures in 1996 are less than they were in 1994, the State has a maintenance of effort deficit, and the Secretary reduces the State's allotment in 1997 by the amount of that deficit.

(2) If, at the time the Secretary makes a determination that a State has failed to meet its maintenance of effort requirements, it is too late for the Secretary to make a reduction in accordance with paragraph (a)(1) of this section, then the Secretary recovers the amount of the maintenance of effort deficit through audit disallowance.

(b) *Specific requirements for construction of facilities.* If the State plan provides for the construction of a facility for community rehabilitation program purposes, the amount of the State's share of expenditures for vocational rehabilitation services under the plan, other than for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation purposes, must be at least equal to the expenditures for those services for the second prior fiscal year. If a State fails to meet the requirements of this paragraph, the Secretary recovers the amount of the maintenance of effort deficit through audit disallowance.

(c) *Separate State agency for vocational rehabilitation services for individuals who are blind.* If there is a separate part of the State plan administered by a separate State agency to provide vocational rehabilitation services for individuals who are blind—

(1) Satisfaction of the maintenance of effort requirements under paragraphs (a) and (b) of this section are determined based on the total amount of a State's non-Federal expenditures under both parts of the State plan; and

(2) If a State fails to meet any maintenance of effort requirement, the Secretary reduces the amount otherwise payable to the State for that fiscal year under each part of the plan in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan in the previous fiscal year were less than they were for that part of the plan for the fiscal year two years prior to the previous fiscal year.

(d) *Waiver or modification.* (1) The Secretary may waive or modify the maintenance of effort requirement in paragraph (a)(1) of this section if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that—

(i) Cause significant unanticipated expenditures or reductions in revenue; and

(ii) Result in—

(A) A general reduction of programs within the State; or

(B) The State making substantial expenditures in the vocational rehabilitation program for long-term purposes due to the one-time costs associated with the construction of a facility for community rehabilitation program purposes, the establishment of a facility for community rehabilitation program purposes, or the acquisition of equipment.

(2) The Secretary may waive or modify the maintenance of effort requirement in paragraph (b) of this section or the 10 percent allotment limitation in § 361.61 if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster, that result in significant destruction of existing facilities and require the State to make substantial expenditures for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation program purposes in order to provide vocational rehabilitation services.

(3) A written request for waiver or modification, including supporting justification, must be submitted to the Secretary as soon as the State determines that an exceptional or uncontrollable circumstance will prevent it from making its required expenditures from non-Federal sources.

(Authority: Sections 101(a)(17) and 111(a)(2) of the Act; 29 U.S.C. 721(a)(17) and 731(a)(2))

§ 361.63 Program income.

(a) *Definition.* Program income means gross income received by the State that is directly generated by an activity supported under this part.

(b) *Sources.* Sources of program income include, but are not limited to, payments from the Social Security Administration for rehabilitating Social Security beneficiaries, payments received from workers' compensation funds, fees for services to defray part or all of the costs of services provided to particular individuals, and income generated by a State-operated community rehabilitation program.

(c) *Use of program income.* (1) Except as provided in paragraph (c)(2) of this section, program income, whenever earned, must be used for the provision of vocational rehabilitation services, the administration of the State plan, and developing and implementing the strategic plan. Program income is considered earned when it is received.

(2) Payments provided to a State from the Social Security Administration for rehabilitating Social Security beneficiaries may also be used to carry out programs under Part B of Title I of the Act (client assistance), Part C of Title I of the Act (innovation and expansion), Part C of Title VI of the Act (supported employment) and Title VII of the Act (independent living).

(3) The State is authorized to treat program income as—

(i) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 34 CFR 80.25(g)(2); or

(ii) A deduction from total allowable costs, in accordance with 34 CFR 80.25(g)(1).

(4) Program income may not be used to meet the non-Federal share requirement under § 361.60.

(Authority: Section 108 of the Act; 29 U.S.C. 728; 34 CFR 80.25)

§ 361.64 Obligation of Federal funds and program income.

(a) Except as provided in paragraph (b) of this section, any Federal funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated by the State unit by the beginning of the succeeding fiscal year and any program income received during a fiscal year that is not obligated by the State unit by the beginning of the succeeding fiscal year must remain available for obligation by the State unit during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year remain available for obligation in the succeeding fiscal year only to the extent that the State unit met the matching requirement for those Federal funds by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(Authority: Section 19 of the Act; 29 U.S.C. 718)

§ 361.65 Allotment and payment of Federal funds for vocational rehabilitation services.

(a) *Allotment.* (1) The allotment of Federal funds for vocational rehabilitation services for each State is computed in accordance with the requirements of section 110 of the Act, and payments are made to the State on a quarterly basis, unless some other period is established by the Secretary.

(2) If the State plan designates one State agency to administer, or supervise the administration of, the part of the plan under which vocational rehabilitation services are provided for individuals who are blind and another State agency to administer the rest of the plan, the division of the State's allotment is a matter for State determination.

(b) *Reallotment.* (1) The Secretary determines not later than 45 days before the end of a fiscal year which States, if any, will not use their full allotment.

(2) As soon as possible, but not later than the end of the fiscal year, the Secretary reallots these funds to other States that can use those additional funds during the current or subsequent fiscal year, provided the State can meet the matching requirement by obligating the non-Federal share of any reallotted funds in the fiscal year for which the funds were appropriated.

(3) Funds reallotted to another State are considered to be an increase in the recipient State's allotment for the fiscal year for which the funds were appropriated.

(Authority: Sections 110 and 111 of the Act; 29 U.S.C. 730 and 731)

Subpart D—Strategic Plan for Innovation and Expansion of Vocational Rehabilitation Services

§ 361.70 Purpose of the strategic plan.

The State shall prepare a statewide strategic plan, in accordance with § 361.71, to develop and use innovative approaches for achieving long-term success in expanding and improving vocational rehabilitation services, including supported employment services, provided under the State plan, including the supported employment supplement to the State plan required under 34 CFR part 363.

(Authority: Section 120 of the Act; 29 U.S.C. 740)

§ 361.71 Procedures for developing the strategic plan.

(a) *Public input.* (1) The State unit shall meet with and receive recommendations from members of the State Rehabilitation Advisory Council, if the State has a Council, and the Statewide Independent Living Council prior to developing the strategic plan.

(2) The State unit shall solicit public input on the strategic plan prior to or at the public meetings on the State plan, in accordance with the requirements of § 361.20.

(3) The State unit shall consider the recommendations received under paragraphs (a)(1) and (a)(2) of this section and, if the State rejects any recommendations, shall include a written explanation of the reasons for those rejections in the strategic plan.

(4) The State unit shall develop a procedure to ensure ongoing comment from the Council or Councils, if applicable, as the plan is being implemented.

(b) *Duration.* The strategic plan must cover a three-year period.

(c) *Revisions.* The State unit shall revise the strategic plan on an annual basis to reflect the unit's actual experience over the previous year and input from the State Rehabilitation Advisory Council, if the State has a Council, individuals with disabilities, and other interested parties.

(d) *Dissemination.* The State unit shall disseminate widely the strategic plan to individuals with disabilities, disability organizations, rehabilitation professionals, and other interested persons and shall make the strategic plan available in accessible formats and appropriate modes of communication.

(Authority: Section 122 of the Act; 29 U.S.C. 742)

§ 361.72 Content of the strategic plan.

The strategic plan must include—

(a) A statement of the mission, philosophy, values, and principles of the vocational rehabilitation program in the State;

(b) Specific goals and objectives for expanding and improving the system for providing vocational rehabilitation services;

(c) Specific multi-faceted and systemic approaches for accomplishing the objectives, including interagency coordination and cooperation, that build upon state-of-the-art practices and research findings and that implement the State plan and the supplement to the State plan submitted under 34 CFR part 363;

(d) A description of the specific programs, projects, and activities funded under this subpart, including how the programs, projects, and activities accomplish the objectives of the subpart, and the resource allocation and budget for the programs, projects, and activities; and

(e) Specific criteria for determining whether the objectives have been achieved, including an assurance that the State will conduct an annual evaluation to determine the extent to which the objectives have been achieved and, if specific objectives have not been achieved, the reasons that the objectives have not been achieved and a description of alternative approaches that will be taken.

(Authority: Section 121 of the Act; 29 U.S.C. 741)

§ 361.73 Use of funds.

(a) A State unit shall use all grant funds received under Title I, Part C of the Act to carry out programs and activities that are identified under the State's strategic plan, including but not limited to those programs and activities that are identified in paragraph (b) of this section.

(b) A State unit shall use at least 1.5 percent of the funds received under section 111 of the Act to carry out one or more of the following types of programs and activities that are identified in the State's strategic plan:

(1) Programs to initiate or expand employment opportunities for individuals with severe disabilities in integrated settings that allow for the use of on-the-job training to promote the objectives of Title I of the Americans with Disabilities Act of 1990.

(2) Programs or activities to improve or expand the provision of employment services in integrated settings to individuals with sensory, cognitive, physical, and mental impairments who traditionally have not been served by the State vocational rehabilitation agency.

(3) Programs or activities to maximize the ability of individuals with disabilities to use rehabilitation technology in employment settings.

(4) Programs or activities that assist employers in accommodating, evaluating, training, or placing individuals with disabilities in the workplace of the employer consistent with the provisions of the Act and Title I of the Americans with Disabilities Act of 1990. These programs or activities may include short-term technical assistance or other effective strategies.

(5) Programs or activities that expand and improve the extent and type of an individual's involvement in the review and selection of his or her training and employment goals.

(6) Programs or activities that expand and improve opportunities for career advancement for individuals with severe disabilities.

(7) Programs, projects, or activities designed to initiate, expand, or improve working relationships between vocational rehabilitation services provided under Title I of the Act and independent living services provided under Title VII of the Act.

(8) Programs, projects, or activities designed to improve functioning of the system for delivering vocational rehabilitation services and to improve coordination and working relationships with other State agencies and local public agencies, business, industry, labor, community rehabilitation programs, and centers for independent living, including projects designed to—

(i) Increase the ease of access to, timeliness of, and quality of vocational rehabilitation services through the development and implementation of policies, procedures, systems, and interagency mechanisms for providing vocational rehabilitation services;

(ii) Improve the working relationships between State vocational rehabilitation agencies and other State agencies, centers for independent living, community rehabilitation programs, educational agencies involved in higher education, adult basic education, and continuing education, and businesses, industry, and labor organizations, in order to create and facilitate cooperation in—

(A) Planning and implementing services; and

(B) Developing an integrated system of community-based vocational rehabilitation services that includes appropriate transitions between service systems; and

(iii) Improve the ability of professionals, advocates, business, industry, labor, and individuals with disabilities to work in cooperative partnerships to improve the quality of vocational rehabilitation services and job and career opportunities for individuals with disabilities.

(9) Projects or activities that ensure that the annual evaluation of the effectiveness of the program in meeting the goals and objectives in the State plan, including the system for evaluating the performance of rehabilitation counselors, coordinators, and other personnel used in the State, facilitates and does not impede the accomplishment of the purpose of this part, including serving individuals with the most severe disabilities.

(10) Projects or activities to support the initiation, expansion, and improvement of a comprehensive system of personnel development.

(11) Programs, projects, or activities to support the provision of training and technical assistance to individuals with disabilities, business, industry, labor, community rehabilitation programs, and others regarding the implementation of the Rehabilitation Act Amendments of 1992, of Title V of the Act, and of the Americans with Disabilities Act of 1990.

(12) Projects or activities to support the funding of the State Rehabilitation Advisory Council and the Statewide Independent Living Council.

(Authority: Sections 101(a)(34)(B) and 123 of the Act; 29 U.S.C. 721(a)(34)(B) and 743)

§ 361.74 Allotment of Federal funds.

(a) The allotment and any reallotment of Federal funds under Title I, Part C of the Act are computed in accordance with the requirements of section 124 of the Act.

(b) If at any time the Secretary determines that any amount will not be expended by a State in carrying out the purpose of this subpart, the Secretary makes that amount available to one or more other States that the Secretary determines will be able to use additional amounts during the fiscal year. Any amount made available to any State under this paragraph of this section is regarded as an increase in the State's allotment for that fiscal year.

(Authority: Section 124 of the Act; 29 U.S.C. 744)

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Part III

The President

Proclamation 6857—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

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Presidential Documents

Title 3—

The President

Proclamation 6857 of December 11, 1995

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.

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), that he determines are in conformity with the obligations of the United States under the International Convention on the Harmonized Commodity Description and Coding System (''the Convention'') and do not run counter to the national economic interest of the United States.

3. (a) Presidential Proclamation No. 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 other annexes to the NAFTA must be modified to ensure that the agreed tariff and certain other treatment accorded under the NAFTA to originating goods will continue to be provided under the tariff categories affected by the modifications to the Convention. The NAFTA parties agreed, on November 6, 1995, to the text of necessary revisions to the NAFTA.

4. Section 202 of the NAFTA Implementation Act (19 U.S.C. 3332) provides certain 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 additional subordinate tariff categories necessary to carry out the NAFTA Implementation Act consistent with the NAFTA.

5. Pursuant to section 1206(a) of the 1988 Act (19 U.S.C. 3006(a)) and section 202 of the NAFTA Implementation Act (19 U.S.C. 3332), I have determined (1) that the modifications to the HTS being proclaimed pursuant to section 1206(a) of the 1988 Act 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; and (2) that the modifications to the HTS being proclaimed pursuant to section 202 of the NAFTA Implementation Act must be incorporated in the HTS in order to ensure that the tariff and certain other treatment accorded under the NAFTA will continue to be given to NAFTA originating goods. The report and layover requirements of section 1206(b) of the 1988 Act (19 U.S.C. 3006(b)) and section 202(q)(2) of the NAFTA Implementation Act (19 U.S.C. 3332(q)) have been complied with.

6. (a) Presidential Proclamation No. 6763 of December 23, 1994, implemented with respect to the United States the trade agreements resulting from the Uruguay Round of multilateral trade negotiations, entered into pursuant to sections 1102(a) and (e) of the 1988 Act (19 U.S.C. 2902(a) and (e)), including Schedule XX—United States of America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994 (''Schedule XX''). Certain provisions set forth in annexes to that proclamation contain technical errors in the instructions for implementing particular changes.

(b) Sections 1102(a) and (e) of the 1988 Act (19 U.S.C. 2902(a) and (e)) authorize the President to proclaim such modification or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties, as he determines to be required or appropriate to carry out any trade agreements entered into under those sections. Section 111(a) of the Uruguay Round Agreements Act (''the URAA'') (19 U.S.C. 3521(a)) authorizes the President to proclaim such other modification of any duty, such other staged rate reduction, or such additional duties as the President determines to be necessary or appropriate to carry out Schedule XX. To clarify the intent of the changes previously proclaimed, I have decided that such technical errors should be corrected.

7. 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, WILLIAM J. CLINTON, President of the United States, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 604 of the 1974 Act (19 U.S.C. 2483), sections 1102, 1205, and 1206 of the 1988 Act (19 U.S.C. 2902, 3005, and 3006), sections 201 and 202 of the NAFTA Implementation Act (19 U.S.C. 3331 and 3332), and section 111(a) of the URAA (19 U.S.C. 3521(a)), do hereby proclaim:

(1) In order to modify the rules of origin under the NAFTA to reflect the amendments agreed to by the NAFTA parties, and to make certain conforming changes, the general notes to the HTS are modified as set forth in Annex I to this proclamation.

(2) In order to make changes in 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 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 (19 U.S.C. 3521(a)), as provided in Presidential Proclamation No. 6763 of December 23, 1994, for goods in the provisions modified in Annex II to this proclamation that are entered or withdrawn from warehouse for consumption on or after 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 A inserted in lieu thereof.

(4) In order to provide for the continuation of previously proclaimed tariff modifications and staged duty reductions under section 201 of the NAFTA Implementation Act (19 U.S.C. 3331), as implemented with respect to the United States in Presidential Proclamation No. 6641 of December 15, 1993, for goods of Canada and of Mexico under the terms of general note 12 to the HTS classifiable in the tariff provisions set forth in or affected by Annex II to this proclamation that are entered or withdrawn from warehouse for consumption on or after the dates specified in sections B and C, respectively, of Annex III to this proclamation, the appropriate rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn followed by the symbol ''CA'' or ''MX'', respectively, for each of the HTS subheadings enumerated in sections B and C of Annex III shall be deleted and the rate of duty provided in such sections inserted in lieu thereof.

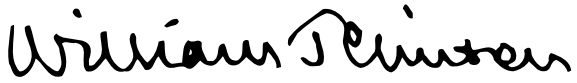
(5) (a) In order to make technical corrections to certain provisions of the annexes to Presidential Proclamation No. 6763 of December 23, 1994, such provisions are modified as set forth in Annex IV to this proclamation.

(b) All provisions of previous proclamations and Executive orders inconsistent with the actions taken in this proclamation are hereby superseded to the extent of such inconsistency.

(6) (a) The modifications 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 and after the later of (i) January 1, 1996, or (ii) the date that is 15 days after the date of publication of this proclamation in the Federal Register.

(b) The modifications to the HTS made by Annexes III and IV to this proclamation shall be effective with respect to goods entered or withdrawn from warehouse for consumption on and after the dates specified in such annexes to this proclamation for each action specified.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of December, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.



Billing code 3195–01–P

ANNEX I

MODIFICATIONS TO THE GENERAL NOTES TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTS)

Effective with respect to articles that are entered, or withdrawn from warehouse for consumption, on or after the later of (1) January 1, 1996, or (2) the fifteenth day after the date of publication of this proclamation in the Federal Register, the HTS is modified as provided herein:

Modifications to general note 12 to the HTS, other than to subdivision (t) of such note:

1. General note 12(c)(iv)(D)(4) is modified by deleting "8469.10.40" and by inserting in lieu thereof "8469.11".

2. General note 12(f)(iii)(D) and 12(r)(v)(A) are each modified by deleting "2101.10.21" and by inserting in lieu thereof "2101.11.21".

Modifications to the tariff classification rules ("TCRs") of subdivision (t) of general note 12:

1. TCR 1 for chapter 15 is modified by adding after the word "chapter" the expression ", except from heading 3823".

2. TCRs 2 through 6, inclusive, for chapter 15 are deleted, TCR 7 is redesignated as TCR 3, and the following new TCR 2 is inserted in numerical sequence:

"2. A change to heading 1520 from any other heading, except from heading 3823."

3. TCR 7 for chapter 19 is deleted and the following new TCRs are inserted in lieu thereof:

"7. A change to headings 1902 through 1903 from any other chapter.

8. A change to subheading 1904.10 from any other chapter.

9. A change to subheading 1904.20 from any other subheading, except from chapter 20.

10. A change to subheading 1904.90 from any other chapter.

11. A change to heading 1905 from any other chapter."

4. TCR 1 for chapter 21 is modified by deleting "2101.10.21" and by inserting in lieu thereof "2101.11.21".

5. TCR 13 for chapter 21 is redesignated as TCR 14, and the following new TCR 13 is inserted in numerical sequence:

"13. A change to tariff items 2106.90.12, 2106.90.15 or 2106.90.18 from any other tariff item, except from headings 2203 through 2209."

6. TCR 7 for chapter 22 is modified by adding after "group" the following:

", except from tariff items 2106.90.12, 2106.90.15 or 2106.90.18".

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7. TCR 1 for chapter 24 is modified to read as follows:

"1. A change to headings 2401 through 2403 from tariff items 2401.10.21, 2401.20.14 or 2403.91.20 or any other chapter."

8. TCRs 1 through 12, inclusive, for chapter 28 are deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to subheadings 2801.10 through 2801.30 from any other subheading, including another subheading within that group.

2. A change to headings 2802 through 2803 from any other heading, including another heading within that group.

3. A change to subheadings 2804.10 through 2804.50 from any other subheading, including another subheading within that group.

4. (A) A change to subheadings 2804.61 through 2804.69 from any subheading outside that group; or

(B) A change to subheadings 2804.61 through 2804.69 from any other subheading within that group, 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.

5. A change to subheadings 2804.70 through 2804.90 from any other subheading, including another subheading within that group.

6. A change to subheadings 2805.11 through 2805.40 from any other subheading, including another subheading within that group.

7. (A) A change to subheading 2806.10 from any other subheading, except from subheading 2801.10; or

(B) A change to subheading 2806.10 from subheading 2801.10, 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.

8. A change to subheading 2806.20 from any other subheading.

9. A change to headings 2807 through 2808 from any other heading, including another heading within that group.

10. A change to subheadings 2809.10 through 2814.20 from any other subheading, including another subheading within that group.

11. (A) A change to subheadings 2815.11 through 2815.12 from any other heading; or

(B) A change to subheadings 2815.11 through 2815.12 from any other subheading within heading 2815, 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.

12. A change to subheading 2815.20 from any other subheading.

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8. TCRs 1 through 12, inclusive, for chapter 28 are deleted and the following new TCRs are inserted in lieu thereof (continued):

13. (A) A change to subheading 2815.30 from any other subheading, except from subheading 2815.11 through 2815.20; or

(B) A change to subheading 2815.30 from subheadings 2815.11 through 2815.20, 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.

14. A change to subheadings 2816.10 through 2818.30 from any other subheading, including another subheading within that group.

15. (A) A change to subheading 2819.10 from any other heading; or

(B) A change to subheading 2819.10 from subheading 2819.90, 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. A change to subheading 2819.90 from any other subheading.

17. (A) A change to subheading 2820.10 from any other heading; or

(B) A change to subheading 2820.10 from subheading 2820.90, 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.

18. A change to subheading 2820.90 from any other subheading.

19. (A) A change to subheadings 2821.10 through 2821.20 from any other heading; or

(B) A change to subheadings 2821.10 through 2821.20 from any other 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.

20. A change to headings 2822 through 2823 from any other heading, including another heading within that group.

21. (A) A change to subheadings 2824.10 through 2824.90 from any other heading; or

(B) A change to subheadings 2824.10 through 2824.90 from any other 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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8. TCRs 1 through 12, inclusive, for chapter 28 are deleted and the following new TCRs are inserted in lieu thereof (continued):

22. A change to subheadings 2825.10 through 2828.90 from any other subheading, including another subheading within that group.

23. A change to subheading 2829.11 from any other subheading.

24. (A) A change to subheadings 2829.19 through 2829.90 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheadings 2829.19 through 2829.90 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.

25. A change to subheadings 2830.10 through 2835.39 from any other subheading, including another subheading within that group.

26. A change to subheading 2836.10 from any other subheading.

27. (A) A change to subheadings 2836.20 through 2836.30 from any subheading outside that group; or

(B) A change to subheadings 2836.20 through 2836.30 from any other subheading within that group, 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.

28. A change to subheadings 2836.40 through 2836.99 from any other subheading, including another subheading within that group.

29. A change to subheadings 2837.11 through 2850.00 from any other subheading, including another subheading within that group.

30. (A) A change to heading 2851 from any other chapter, except from chapters 28 through 38; or

(B) A change to heading 2851 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."

9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to subheadings 2901.10 through 2901.29 from any other subheading, including another subheading within that group.

2. A change to subheadings 2902.11 through 2902.44 from any other subheading, including another subheading within that group.

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9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof (continued):

3. (A) A change to subheading 2902.50 from any other subheading, except from subheading 2902.60; or

(B) A change to subheading 2902.50 from subheading 2902.60, 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.

4. A change to subheadings 2902.60 through 2902.90 from any other subheading, including another subheading within that group.

5. (A) A change to subheadings 2903.11 through 2903.30 from any other subheading, including another subheading within that group, except from headings 2901 or 2902; or

(B) A change to subheadings 2903.11 through 2903.30 from headings 2901 or 2902, whether or not there is also a change from any other subheading, including another subheading within subheadings 2903.11 through 2903.30, 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 subheadings 2903.41 through 2903.69 from any other subheading, including another subheading within that group, except from headings 2901 or 2902; or

(B) A change to subheadings 2903.41 through 2903.69 from headings 2901 or 2902, whether or not there is also a change from any other subheading, including another subheading within subheadings 2903.41 through 2903.69, 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.

7. (A) A change to subheadings 2904.10 through 2904.90 from any other subheading, including another subheading within that group, except from headings 2901 through 2903; or

(B) A change to subheadings 2904.10 through 2904.90 from headings 2901 through 2903, whether or not there is also a change from any other subheading, including another subheading within subheadings 2904.10 through 2904.90, 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.

8. (A) A change to subheadings 2905.11 through 2905.45 from any other subheading, including another subheading within that group; or

(B) A change to esters of glycerol formed with acids of heading 2904 from glycerol of subheading 2905.45.

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9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof (continued):

9. (A) A change to tariff item 2905.49.20 from any other tariff item, except from headings 2901 through 2903; or

(B) A change to tariff item 2905.49.20 from headings 2901 through 2903, whether or not there is also a change from any other tariff item, provided there is a regional value content of not less than:

(1) 60 per cent where the transaction value method is used, or

(2) 50 per cent where the net cost method is used.

10. A change to subheading 2905.49 from any other subheading.

11. A change to subheading 2905.50 from any other subheading.

12. A change to subheadings 2906.11 through 2907.30 from any other subheading, including another subheading within that group.

13. (A) A change to subheadings 2908.10 through 2908.90 from any other heading, except from heading 2907; or

(B) A change to subheadings 2908.10 through 2908.90 from any other subheading within that group or heading 2907, 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 subheadings 2909.11 through 2909.20 from any other heading; or

(B) A change to subheadings 2909.11 through 2909.20 from any other subheading within heading 2909, 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.

15. A change to subheading 2909.30 from any other subheading.

16. (A) A change to subheadings 2909.41 through 2909.60 from any other heading; or

(B) A change to subheadings 2909.41 through 2909.60 from any other subheading within heading 2909, 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.

17. A change to subheadings 2910.10 through 2911.00 from any other subheading, including another subheading within that group.

18. A change to subheading 2912.11 from any other subheading.

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9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof (continued):

19. (A) A change to subheading 2912.12 from any other subheading, except from subheading 2901.21; or

(B) A change to subheading 2912.12 from subheading 2901.21, 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.

20. A change to subheadings 2812.13 through 2912.50 from any other subheading, including another subheading within that group.

21. (A) A change to subheading 2912.60 from any other subheading, except from subheading 2912.11; or

(B) A change to subheading 2912.60 from subheading 2912.11, 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.

22. (A) A change to heading 2913 from any other heading, except from heading 2912; or

(B) A change to heading 2913 from heading 2912, 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.

23. A change to subheadings 2914.11 through 2914.70 from any other subheading, including another subheading within that group.

24. A change to subheading 2915.11 from any other subheading.

25. (A) A change to subheading 2915.12 from any other subheading, except from subheading 2915.11; or

(B) A change to subheading 2915.12 from subheading 2915.11, 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.

26. A change to subheading 2915.13 from any other subheading.

27. (A) A change to subheading 2915.21 from any other subheading, except from subheading 2912.12; or

(B) A change to subheading 2915.21 from subheading 2912.12, 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.

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9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof (continued):

28. (A) A change to subheadings 2915.22 through 2915.31 from any other subheading, including another subheading within that group, except from subheading 2915.21; or

(B) A change to subheadings 2915.22 through 2915.31 from subheading 2915.21, whether or not there is also a change from any other subheading, including another subheading within 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.

29. A change to subheading 2915.32 from any other subheading.

30. (A) A change to subheadings 2915.33 through 2915.34 from any other subheading, including another subheading within that group, except from subheading 2915.21; or

(B) A change to subheadings 2915.33 through 2915.34 from subheading 2915.21, whether or not there is also a change from any other subheading, including another subheading within 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.

31. A change to subheading 2915.35 from any other subheading.

32. (A) A change to subheadings 2915.39 through 2915.40 from any other subheading, including another subheading within that group, except from subheading 2915.21; or

(B) A change to subheadings 2915.39 through 2915.40 from subheading 2915.21, whether or not there is also a change from any other subheading, including another subheading within 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.

33. A change to subheadings 2915.50 through 2915.70 from any other subheading, including another subheading within that group.

34. (A) A change to subheading 2915.90 from any other subheading; or

(B) A change to valproic salts of subheading 2915.90 from valproic acids of subheading 2915.90.

35. A change to subheadings 2916.11 through 2917.39 from any other subheading, including another subheading within that group.

36. A change to subheadings 2918.11 through 2918.21 from any other subheading, including another subheading within that group.

37. (A) A change to subheadings 2918.22 through 2918.23 from any other subheading, including another subheading within that group, except from subheading 2918.21; or

(B) A change to subheadings 2918.22 through 2918.23 from subheading 2918.21, whether or not there is also a change from any other subheading, including another subheading within 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.

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9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof (continued):

38. (A) A change to subheadings 2918.29 through 2918.30 from any other subheading, including another subheading within that group; or

(B) A change to parabens of subheading 2918.29 from p-hydroxybenzoic acid of subheading 2918.29.

39. (A) A change to subheading 2918.90 from any other subheading, except from subheadings 2908.10 or 2915.40; or

(B) A change to subheading 2918.90 from subheadings 2908.10 or 2915.40, 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.

40. A change to heading 2919 from any other heading.

41. A change to subheadings 2920.10 through 2920.90 from any other subheading, including another subheading within that group.

42. (A) A change to subheadings 2921.11 through 2921.12 from any other heading, except from headings 2901, 2902, 2904, 2916, 2917 or 2926; or

(B) A change to subheadings 2921.11 through 2921.12 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.

43. A change to subheading 2921.19 from any other subheading.

44. (A) A change to subheadings 2921.21 through 2921.29 from any other heading, except from headings 2901, 2902, 2904, 2916, 2917 or 2926; or

(B) A change to subheadings 2921.21 through 2921.29 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.

45. A change to subheading 2921.30 from any other subheading.

46. (A) A change to subheadings 2921.41 through 2921.59 from any other heading, except from headings 2901, 2902, 2904, 2916, 2917 or 2926; or

(B) A change to subheadings 2921.41 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.

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9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof (continued):

47. (A) A change to subheadings 2922.11 through 2922.50 from any other heading, except from headings 2905 through 2921; or

(B) A change to subheadings 2922.11 through 2922.50 from any other 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.

48. A change to subheadings 2923.10 through 2923.90 from any other subheading, including another subheading within that group.

49. A change to subheading 2924.10 from any other subheading.

50. (A) A change to subheading 2924.21 from any other subheading, except from subheading 2917.20; or

(B) A change to subheading 2924.21 from subheading 2917.20, 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 transection value method is used, or

(2) 50 percent where the net cost method is used.

51. (A) A change to subheadings 2924.22 through 2924.29 from any subheading outside that group, except from subheading 2917.20; or

(B) A change to subheadings 2924.22 through 2924.29 from any other subheading within that group or subheading 2917.20, 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 transection value method is used, or

(2) 50 percent where the net cost method is used.

52. A change to subheadings 2925.11 through 2928.00 from any other subheading, including another subheading within that group.

53. (A) A change to subheadings 2929.10 through 2929.90 from any other subheading, including another subheading within that group, except from heading 2921; or

(B) A change to subheadings 2929.10 through 2929.90 from heading 2921, whether or not there is also a change from any other subheading, including another subheading within 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.

54. A change to subheadings 2930.10 through 2930.90 from any other subheading, including another subheading within that group.

55. A change to heading 2931 from any other heading.

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9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof (continued):

56. (A) A change to subheadings 2932.11 through 2932.99 from any other heading; or

(B) A change to subheadings 2932.11 through 2932.99 from any other 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.

57. (A) A change to subheadings 2933.11 through 2933.69 from any other heading; or

(B) A change to subheadings 2933.11 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.

58. (A) A change to subheading 2933.71 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheading 2933.71 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.

59. (A) A change to subheadings 2933.79 through 2933.90 from any other heading; or

(B) A change to subheadings 2933.79 through 2933.90 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.

60. (A) A change to subheadings 2934.10 through 2934.90 from any other subheading, including another subheading within that group; or

(B) A change to nucleic acids of subheading 2934.90 from other heterocyclic compounds of subheading 2934.90.

61. A change to heading 2935 from any other heading.

62. (A) A change to subheadings 2936.10 through 2936.90 from any other heading; or

(B) A change to subheadings 2936.10 through 2936.90 from any other 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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9. TCR 1 for chapter 29 is deleted and the following new TCRs are inserted in lieu thereof (continued):

63. (A) A change to subheadings 2937.10 through 2937.99 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheadings 2937.10 through 2937.99 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.

64. (A) A change to subheadings 2938.10 through 2938.90 from any other heading, except from heading 2940; or

(B) A change to subheadings 2938.10 through 2938.90 from any other subheading within that group or heading 2940, 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.

65. A change to subheadings 2939.10 through 2939.90 from any other subheading, including another subheading within that group.

66. (A) A change to heading 2940 from any other heading, except from heading 2938; or

(B) A change to heading 2940 from heading 2938, 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.

67. (A) A change to subheadings 2941.10 through 2941.90 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheadings 2941.10 through 2941.90 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.

68. (A) A change to heading 2942 from any other chapter, except from chapter 28 through 38; or

(B) A change to heading 2942 from any other heading within chapter 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."

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10. TCRs 1 through 6, inclusive, 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; 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, 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.

3. A change to subheadings 3002.10 through 3002.90 from any other subheading, including another subheading within that group.

4. (A) A change to subheadings 3003.10 through 3003.90 from any other heading; or

(B) A change to subheadings 3003.10 through 3003.90 from any other heading within heading 3003, 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.

5. (A) A change to subheadings 3004.10 through 3004.32 from any other heading, except from heading 3003; or

(B) A change to subheadings 3004.10 through 3004.32 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, 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 change to subheading 3004.39 from any other subheading.

7. (A) A change to subheadings 3004.40 through 3004.50 from any other heading, except from heading 3003; 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, 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.

8. A change to subheading 3004.90 from any other subheading.

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10. TCRs 1 through 6, inclusive, for chapter 30 are deleted and the following new TCRs are inserted in lieu thereof (continued):

9. (A) A change to subheadings 3005.10 through 3005.90 from any other heading; or

(B) A change to subheadings 3005.10 through 3005.90 from any other heading within heading 3003, 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.

10. (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, 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.

11. A change to subheading 3006.20 from any other subheading.

12. (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, 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."

11. TCR 1 for chapter 31 is deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to heading 3101 from any other heading.

2. A change to subheadings 3102.10 through 3105.90 from any other subheading, including another subheading within that group."

12. TCRs 1 through 9, inclusive, for chapter 32 are deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to subheadings 3201.10 through 3202.90 from any other heading, including another subheading within that group.

2. A change to heading 3203 from any other heading.

3. A change to subheadings 3204.11 through 3204.16 from any other subheading, including another subheading within that group.

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12. TCRs 1 through 9, inclusive, for chapter 32 are deleted and the following new TCRs are inserted in lieu thereof (continued):

4. (A) For any color, as defined under the Color Index, identified in the following list of colors, a change to subheading 3204.17 from any other subheading:

Pigment yellow: 1, 3, 16, 55, 61, 62, 65, 73, 74, 75, 81, 97, 120, 151, 152, 154, 156, and 175;

Pigment orange: 4, 5, 13, 34, 36, 60, and 62;

Pigment red: 2, 3, 5, 12, 13, 14, 17, 18, 19, 22, 23, 24, 31, 32, 48, 49, 52, 53, 57, 63, 112, 119, 133, 146, 170, 171, 175, 176, 183, 185, 187, 188, 208, and 210; or

(B) For any color, as defined under the Color Index, not identified in the list of colors:

(1) a change to subheading 3204.17 from any other subheading, except from within chapter 29; or

(2) a change to subheading 3204.17 from any subheading within chapter 29, whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

(I) 60 percent where the transaction value method is used, or

(II) 50 percent where the net cost method is used.

5. (A) A change to subheading 3204.19 from any other heading; or

(B) A change to subheading 3204.19 from any other subheading within heading 3204, 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.

6. (A) A change to subheadings 3204.20 through 3204.90 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheadings 3204.20 through 3204.90 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.

7. A change to heading 3205 from any other heading.

8. (A) A change to subheadings 3206.11 through 3206.50 from any other chapter, except from chapter 28 through 38; or

(B) A change to subheadings 3206.11 through 3206.50 from any other subheading within chapter 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.

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12. TCRs 1 through 9, inclusive, for chapter 32 are deleted and the following new TCRs are inserted in lieu thereof (continued):

9. A change to subheadings 3207.10 through 3207.40 from any other subheading, including another subheading within that group.

10. A change to headings 3208 through 3210 from any heading outside that group.

11. A change to heading 3211 from any other heading.

12. A change to subheadings 3212.10 through 3212.90 from any other subheading, including another subheadings within that group.

13. A change to heading 3213 from any other heading.

14. A change to subheadings 3214.10 through 3214.90 from any other subheading, including another subheading within that group.

15. A change to heading 3215 from any other heading."

13. TCRs 1 through 4, inclusive, for chapter 33 are deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to subheading 3301.11 from any other subheading.

2. (A) A change to subheadings 3301.12 through 3301.13 from any other chapter; or

(B) A change to subheadings 3301.12 through 3301.13 from any other subheading within chapter 33, 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.

3. A change to subheading 3301.14 from any other subheading.

4. (A) A change to subheading 3301.19 from any other chapter; or

(B) A change to subheading 3301.19 from any other subheading within chapter 33, 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.

5. A change to subheadings 3301.21 through 3301.26 from any other subheading, including another subheadings within that group.

6. (A) A change to subheadings 3301.29 through 3301.90 from any other chapter; or

(B) A change to subheadings 3301.29 through 3301.90 from any other subheading within chapter 33, 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.

7. A change to heading 3302 from any other heading, except from headings 2207 through 2208.

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13. TCRs 1 through 4, inclusive, for chapter 33 are deleted and the following new TCRs are inserted in lieu thereof (continued):

8. (A) A change to heading 3303 from any other chapter; or

(B) A change to heading 3303 from any other heading within chapter 33, 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.

9. (A) A change to subheadings 3304.10 through 3305.90 from any heading outside that group, except from headings 3306 through 3307; or

(B) A change to subheadings 3304.10 through 3305.90 from any other subheading within that group or headings 3306 through 3307, whether or not there is also a change from any heading 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.

10. (A) A change to subheading 3306.10 from any other heading, except from headings 3304 through 3305 or 3307; or

(B) A change to subheadings 3306.10 from headings 3304 through 3305 or 3307, 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.

11. A change to subheading 3306.20 from any other subheading, except from headings 5201 through 5203, chapter 54 or headings 5501 through 5507.

12. (A) A change to subheading 3306.90 from any other heading, except from headings 3304 through 3305 or 3307; or

(B) A change to subheading 3306.90 from headings 3304 through 3305 or 3307, 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.

13. (A) A change to subheadings 3307.10 through 3307.90 from any other heading, except from headings 3304 through 3306; or

(B) A change to subheadings 3307.10 through 3307.90 from headings 3304 through 3306, 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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14. TCRs 2 through 6, inclusive, for chapter 34 are deleted, TCR 7 is renumbered as TCR 10, and the following new TCRs are inserted in numerical sequence:

"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 subheading 3817.10; 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.

3. A change to subheading 3402.13 from any other subheading.

4. (A) A change to subheading 3402.19 from any other heading; or

(B) A change to subheading 3402.19 from any other 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.

5. (A) A change to subheadings 3402.20 through 3402.90 from any subheading outside that group; or

(B) A change to subheadings 3402.20 through 3402.90 from any other subheading within that group, 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.

6. A change to subheadings 3403.11 through 3403.99 from any other subheading, including another subheading within that group.

7. A change to subheadings 3404.10 through 3404.90 from any other subheading, including another subheading within that group.

8. A change to subheadings 3405.10 through 3405.40 from any other subheading, including another subheading within that group.

9. (A) A change to subheading 3405.90 from any other heading; or

(B) A change to subheading 3405.90 from any other subheading within heading 3405, 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."

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15. TCRs 1 and 2 for chapter 35 are deleted, TCR 6 is deleted, TCRs 3 through 5 are renumbered as 4 through 6, respectively, and the following new TCRs 1 through 3, inclusive, and 7 for chapter 35 are inserted in numerical sequence:

"1. A change to subheadings 3501.10 through 3501.90 from any other subheading, including another subheading within that group.

2. A change to subheadings 3502.11 through 3502.19 from any subheading outside that group.

3. A change to subheadings 3502.20 through 3502.90 from any other subheading, including another subheading within that group.

7. A change to subheadings 3507.10 through 3507.90 from any other subheading, including another subheading within that group."

16. TCR 4 for chapter 36 is deleted and the following new TCRs for chapter 36 are inserted in lieu thereof:

"4. A change to subheading 3606.10 from any other subheading.

5. (A) A change to subheading 3606.90 from any other heading; or

(B) A change to subheading 3606.90 from any other subheading within heading 3606, 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."

17. TCRs 1 through 3, inclusive, for chapter 38 are deleted and the following new TCRs for chapter 38 are inserted in lieu thereof:

"1. A change to subheadings 3801.10 through 3801.90 from any other subheading, including another subheading within that group.

2. (A) A change to subheadings 3802.10 through 3802.90 from any other heading; or

(B) A change to subheadings 3802.10 through 3802.90 from any other subheading within heading 3802, 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.

3. A change to headings 3803 through 3804 from any other heading, including another heading within that group.

4. A change to subheadings 3805.10 through 3805.90 from any other subheading, including another subheading within that group.

5. A change to subheadings 3806.10 through 3806.90 from any other subheading, including another subheading within that group.

6. A change to heading 3807 from any other heading.

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17. TCRs 1 through 3, inclusive, for chapter 38 are deleted and the following new TCRs for chapter 38 are inserted in lieu thereof (continued):

7. A change to heading 3808 from any other heading, provided there is a regional value content of not less than:

   (A) 60 percent where the transaction value method is used and the good contains no more than one active ingredient, or 80 percent where the transaction value method is used and the good contains more than one active ingredient; or

   (B) 50 percent where the net cost method is used and the good contains no more than one active ingredient, or 70 percent where the net cost method is used and the good contains more than one active ingredient.

8. (A) A change to subheading 3809.10 from any other subheading, except from subheading 3505.10; or

   (B) A change to subheading 3809.10 from subheading 3505.10, 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.

9. A change to subheadings 3809.91 through 3809.92 from any other subheading, including another subheading within that group.

10. (A) A change to subheading 3809.93 from any other heading; or

   (B) A change to subheading 3809.93 from any other subheading within heading 3809, 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 not cost method is used.

11. (A) A change to subheadings 3810.10 through 3810.90 from any other chapter, except from chapters 28 through 38; or

   (B) A change to subheadings 3810.10 through 3810.90 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.

12. (A) A change to subheadings 3811.11 through 3811.19 from any other chapter, except from chapters 28 through 38; or

   (B) A change to subheadings 3811.11 through 3811.19 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.

13. A change to subheadings 3811.21 through 3811.29 from any other subheading, including another subheading within that group.

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17. TCRs 1 through 3, inclusive, for chapter 38 are deleted and the following new TCRs for chapter 38 are inserted in lieu thereof (continued):

14. (A) A change to subheading 3811.90 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheading 3811.90 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.

15. (A) A change to subheadings 3812.10 through 3812.30 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheadings 3812.10 through 3812.30 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.

16. A change to headings 3813 through 3814 from any other heading, including another heading within that group.

17. A change to subheadings 3815.11 through 3815.90 from any other subheading, including another subheading within that group.

18. (A) A change to heading 3816 from any other chapter, except from chapters 28 through 38; or

(B) A change to heading 3816 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.

19. A change to subheadings 3817.10 through 3817.20 from any other subheading, including another subheading within that group.

20. A change to headings 3818 through 3819 from any other heading, including another heading within that group.

21. (A) A change to heading 3820 from any other heading, except from subheading 2905.31 or 2905.49; or

(B) A change to heading 3820 from subheading 2905.31 or 2905.49, 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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17. TCRs 1 through 3, inclusive, for chapter 38 are deleted and the following new TCRs for chapter 38 are inserted in lieu thereof (continued):

22. (A) A change to heading 3821 from any other heading, except from heading 35.03; or

(B) A change to heading 3821 from heading 3503, 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.

23. (A) A change to heading 3822 from any other chapter, except from chapters 28 through 38; or

(B) A change to 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.

24. A change to subheadings 3823.11 through 3823.13 from any other heading, except from heading 1520.

25. A change to subheading 3823.19 from any other subheading.

26. A change to subheading 3823.70 from any other heading, except from heading 1520.

27. A change to subheadings 3824.10 through 3824.20 from any other subheading, including another subheading within that group.

28. (A) A change to subheading 3824.30 from any other subheading, except from heading 2849; or

(B) A change to subheading 3824.30 from heading 2849, 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.

29. A change to subheadings 3824.40 through 3824.60 from any other subheading, including another subheading within that group.

30. (A) A change to subheadings 3824.71 through 3824.90 from any other chapter, except from chapters 28 through 38; or

(B) A change to subheadings 3824.71 through 3824.90 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."

18. TCRs 5 and 8 for chapter 39 are each modified by deleting the word "percentage".

19. TCR 2 for chapter 54 is modified by deleting "5407.60.11, 5407.60.21 or 5407.60.91" and by inserting in lieu thereof "5407.61.11, 5407.61.21 or 5407.61.91".

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20(a). TCR 27 for chapter 61 is modified to read as follows:

"27. (A) A change to subheading 6107.21 from tariff item 6002.92.10, provided that the good, exclusive of collar, cuffs, waistband or elastic, is wholly of such fabric and the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties; or

(B) A change to subheading 6107.21 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516 or 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties."

(b). TCR 30 for chapter 61 is modified to read as follows:

"30. (A) A change to subheading 6108.21 from tariff item 6002.92.10, provided that the good, exclusive of waistband, elastic or lace, is wholly of such fabric and the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties; or

(B) A change to subheading 6108.21 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516 or 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties."

(c). TCR 32 for chapter 61 is modified to read as follows:

"32. (A) A change to subheading 6108.31 from tariff item 6002.92.10, provided that the good, exclusive of collar, cuffs, waistband, elastic or lace, is wholly of such fabric and the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties; or

(B) A change to subheading 6108.31 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516 or 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties."

21. TCR 4 for chapter 68 is modified by deleting "other" and by inserting in lieu thereof "any".

22(a). The Heading rule for chapter 71 is deleted and the following new Heading rule is inserted in lieu thereof:

"Heading rule: Pearls, permanently strung but without the addition of clasps or other ornamental features of precious metals or stones, shall be treated as an originating good only if the pearls were obtained in the territory of one or more of the Parties.".

(b). TCR 2 for chapter 71 is modified by adding after "group" the following expression:

", except from tariff items 7101.10.30 or 7101.22.30".

23. TCR 7(D) for chapter 73 is modified by deleting the semicolon after the first appearance of "I-sections" and by inserting in lieu thereof a comma.

24. TCR 27 for chapter 73 is modified by deleting "other".

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25(a). The following new Subheading rule is inserted immediately before TCR 1 for chapter 83:

"Subheading rule: The underscoring of the designations in subdivision 1 pertains to goods provided for in subheading 8301.20 for use in a motor vehicle of chapter 87."

(b). The designations "1.", "(A)" and "(B)" in TCR 1 for chapter 83 are underscored, and the word "other" is inserted after "any" in subdivision (A).

26. Chapter rules 2 and 3 for chapter 84 are redesignated as chapter rules 3 and 4, respectively, and new chapter rule 2 is inserted in numerical sequence:

"Chapter rule 2: For purposes of subheading 8471.49, the origin of each unit presented within a system shall be determined in accordance with the rule that would be applicable to such unit if it were presented separately; and the special rate of duty applicable to each unit presented within a system shall be the rate that is applicable to such unit under the appropriate tariff item within subheading 8471.49.

For purposes of this rule, the term "unit presented within a system" shall mean:

(a) a separate unit as described in note 5(B) to chapter 84 of the tariff schedule; or

(b) any other separate machine that is presented and classified with a system under subheading 8471.49."

27. Chapter rule 3 for chapter 84 (as redesignated) is modified by deleting "8471.92" and by inserting in lieu thereof "8471.60".

28. TCR 11 for chapter 84 is modified by deleting "8406.19" and by inserting in lieu thereof "8406.82".

29. TCR 33(A) and (B) for chapter 84 are modified by deleting "8415.81" at each instance and by inserting in lieu thereof "8415.20", and subdivision (B) is modified by deleting the word "other".

30. TCR 103(A) and (B) for chapter 84 are modified by deleting "8443.50" at each instance and by inserting in lieu thereof "8443.59".

31. TCR 130 for chapter 84 is modified by deleting "8456.90" and by inserting in lieu thereof "8456.99".

32. TCR 187(A) and (B) for chapter 84 are modified by deleting "tariff item 8469.10.40" at each instance and by inserting in lieu thereof "subheading 8469.11".

33. TCR 188 for chapter 84 is deleted and the following new TCR 188 is inserted in lieu thereof:

"188. (A) A change to subheadings 8469.12 through 8469.30 from any other heading, except from heading 8473; or

(B) A change to subheadings 8469.12 through 8469.30 from heading 8473, 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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34. TCRs 191 through 204, inclusive, for chapter 84 are deleted; TCR 213 is deleted; TCRs 205 through 212, inclusive, are redesignated as TCRs 206 through 213, respectively; and the following new TCRs are inserted in numerical sequence:

"191. A change to subheadings 8471.30 through 8471.41 from any subheading outside that group, except from subheadings 8471.49 or 8471.50.

Subheading 8471.49 rule: The origin of each unit presented within a system shall be determined as though each unit were presented separately and were classified under the appropriate tariff provision for that unit.

192. A change to subheading 8471.50 from any other subheading, except from subheadings 8471.30 through 8471.49.

193. A change to tariff item 8471.60.35 from any other subheading, except from subheadings 8471.49 or 8540.40 or tariff item 8540.91.15.

194. A change to tariff items 8471.60.51 or 8471.60.61 from any other tariff item, except from subheading 8471.49 or tariff items 8473.30.10, 8473.30.30 or 8473.30.60.

195. A change to tariff item 8471.60.52 or 8471.60.62 from any other tariff item, except from subheading 8471.49 or tariff item 8473.30.10.

196. A change to tariff items 8471.60.53 or 8471.60.63 from any other tariff item, except from subheading 8471.49 or tariff items 8473.30.10, 8473.30.30 or 8473.30.60.

197. A change to tariff items 8471.60.54 or 8471.60.64 from any other tariff item, except from subheading 8471.49 or tariff items 8473.30.30 or 8473.30.60.

198. A change to tariff items 8471.60.55 or 8471.60.65 from any other tariff item, except from subheading 8471.49 or tariff items 8473.30.30 or 8473.30.60.

199. A change to tariff items 8471.60.56 or 8471.60.66 from any other tariff item, except from subheading 8471.49 or tariff items 8473.30.30 or 8473.30.60.

200. A change to subheading 8471.60 from any other subheading, except from subheading 8471.49.

201. A change to subheading 8471.70 from any other subheading, except from subheading 8471.49.

202. A change to tariff item 8471.80.10 from any other tariff item, except from subheading 8471.49.

203. A change to tariff item 8471.80.40 from any other tariff item, except from subheading 8471.49.

204. A change to any other tariff item within subheading 8471.80 from tariff items 8471.80.10 or 8471.80.40 or any other subheading, except from subheading 8471.49.

205. A change to subheading 8471.90 from any other subheading."

35. The following new TCR 208A for chapter 84 is inserted immediately after TCR 208 (as redesignated):

"208A. A change to subheading 8473.10 from any other heading."

36. The text for TCR 213 for chapter 84 is deleted.

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37. The following new TCRs for chapter 84 are inserted immediately after TCR 215 for chapter 84:

"215A. A change to tariff item 8473.50.30 from any other tariff item.

215B. A change to tariff item 8473.50.60 from any other tariff item.

Subheading rule: Subdivision (B) of rule 215C does not apply to a part or accessory provided for in subheading 8473.50 if that part or accessory is used in the production of a good provided for in subheading 8469.11 or heading 8471.

215C. (A) A change to subheading 8473.50 from any other heading; or

(B) No required change in tariff classification to subheading 8473.50, 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."

38. TCR 218(A) and (B) for chapter 84 are modified by deleting "8475.20" at each instance and by inserting in lieu thereof "8475.29".

39. TCR 220(A) and (B) for chapter 84 are modified by deleting "8476.11" at each instance and by inserting in lieu thereof "8476.21", and by deleting "8476.19" at each instance and by inserting in lieu thereof "8476.89".

40. Chapter rule 5 for chapter 85 is modified by inserting in subdivision (a) immediately after "television picture tube" the expression "(including video monitor or video projector cathode-ray tube)", and by inserting in subdivision (b) immediately after "picture tube" the expression "(including video monitor or video projector cathode-ray tube)".

41. TCR 5 for chapter 85 is deleted and the following new TCR is inserted in lieu thereof:

"5. A change to tariff items 8504.40.60 or 8504.40.70 from any other tariff item, except from subheading 8471.49."

42. TCR 8 for chapter 85 is redesignated as TCR 8A, and the following new TCR 8 is inserted immediately after TCR 7 for such chapter:

"8. A change to tariff item 8504.90.70 from any other tariff item."

43. TCRs 11 through 14, inclusive, for chapter 85 are deleted and the following new TCRs are inserted in numerical sequence:

"11. (A) A change to subheadings 8506.10 through 8506.80 from any other heading, except from tariff items 8548.10.05 or 8548.10.15; or

(B) A change to subheadings 8506.10 through 8506.80 from subheading 8506.90, whether or not there is also a change from any other heading, except from tariff items 8548.10.05 or 8548.10.15, 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.

12. A change to subheading 8506.90 from any other heading, except tariff items 8548.10.05 or 8548.10.15.

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43. TCRs 11 through 14, inclusive, for chapter 85 are deleted and the following new TCRs are inserted in numerical sequence (continued):

13. (A) A change to subheadings 8507.10 through 8507.80 from any other heading, except from tariff items 8548.10.05 or 8548.10.15; or

(B) A change to subheadings 8507.10 through 8507.80 from subheading 8507.90, whether or not there is also a change from any other heading, except from tariff items 8548.10.05 or 8548.10.15, 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.

14. A change to subheading 8507.90 from any other heading, except from tariff items 8548.10.05 or 8548.10.15."

44. TCR 15 for chapter 85 is modified by deleting from subdivision (A) the word "other" and by deleting from subdivision (B) the word "other" and by inserting after "subheading" and before the succeeding comma the expression "outside that group".

45. TCR 17 for chapter 85 is modified by deleting from subdivision (A) the word "other" and by deleting from subdivision (B) the word "other" and by inserting after "subheading" and before the succeeding comma the expression "outside that group".

46. TCR 20(A) and (B) for chapter 85 are modified by deleting "8510.20" at each instance and by inserting in lieu thereof "8510.30".

47. TCR 50 for chapter 85 is deleted and the following new TCRs are inserted in numerical sequence:

"50. A change to subheading 8517.11 from any other subheading, except from tariff items 8517.90.12, 8517.90.36, 8517.90.38 or 8517.90.44.

50A. A change to tariff item 8517.19.40 from any other subheading, provided that, with respect to printed circuit assemblies (PCAs) of tariff items 8473.30.10, 8517.90.12, 8517.90.16, 8517.90.24, 8517.90.26, 8517.90.32, 8517.90.36, 8517.90.38 or 8517.90.44:

(A) except as provided in subdivision (B) of this rule, for each multiple of nine PCAs, or any portion thereof, that is contained in the good, only one PCA may be a non-originating PCA, and

(B) if the good contains less than three PCAs, all of the PCAs must be originating PCAs.

50B. A change to subheading 8517.19 from any other subheading, except from tariff items 8517.90.12, 8517.90.36, 8517.90.38 or 8517.90.44."

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48(a). TCR 51 for chapter 85 is modified by deleting "8517.20" and by inserting in lieu thereof "8517.22".

(b). TCRs 52 through 56, inclusive, for chapter 85 are deleted and the following new TCRs for chapter 85 are inserted in numerical sequence:

"52. A change to subheading 8517.21 from any other subheading, except from tariff item 8517.90.04."

53. A change to tariff item 8517.50.10 from any other subheading.

54. A change to tariff item 8517.50.50 from any other subheading, provided that, with respect to printed circuit assemblies (PCAs) of tariff items 8473.30.10, 8517.90.16, 8517.90.24, 8517.90.26, 8517.90.32, 8517.90.36, 8517.90.38 or 8517.90.44:

(A) except as provided in subparagraph (B) of this rule, for each multiple of nine PCAs, or any portion thereof, that is contained in the good, only one PCA may be a non-originating PCA, and

(B) if the good contains less than three PCAs, all of the PCAs must be originating PCAs.

55. A change to subheading 8517.50 from any other subheading.

56. A change to tariff item 8517.80.10 from any other subheading, provided that, with respect to printed circuit assemblies (PCAs) of tariff items 8473.30.10, 8517.90.16, 8517.90.24, 8517.90.26, 8517.90.32, 8517.90.36, 8517.90.38 or 8517.90.44:

(A) except as provided in subparagraph (B), for each multiple of nine PCAs, or any portion thereof, that is contained in the good, only one PCA may be a non-originating PCA, and

(B) if the good contains less than three PCAs, all of the PCAs must be originating PCAs.

56A. A change to subheading 8517.80 from any other subheading."

49. The following new TCR 79A for chapter 85 is inserted immediately after TCR 79 for such chapter:

"79A. A change to subheading 8525.40 from any other subheading, except from tariff items 8529.90.01, 8529.90.03, 8529.90.06, 8529.90.09, 8529.90.13, 8529.90.16, 8529.90.19 or 8529.90.23."

50. TCR 82 for chapter 85 is modified by deleting "8527.11" and by inserting in lieu thereof "8527.12".

51. TCRs 84 through 92, inclusive, for chapter 85 are deleted and the following new TCRs for such chapter are inserted in numerical sequence:

"84. A change to tariff items 8528.12.12, 8528.12.16, 8528.12.20 or 8528.12.24 from any other heading, except from tariff items 8529.90.01, 8529.90.03, 8529.90.06, 8529.90.09, 8529.90.13, 8529.90.16, 8529.90.19, 8529.90.23, 8529.90.29, 8529.90.33, 8529.90.36, 8529.90.39, 8529.90.43, 8529.90.46 or 8529.90.49.

85. A change to tariff items 8528.12.28 or 8528.12.32 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff item 8540.11.10 or except from tariff items 7011.20.10 and 8540.91.15.

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51. TCRs 84 through 92, inclusive, for chapter 85 are deleted and the following new TCRs for such chapter are inserted in numerical sequence (continued):

Tariff item rule: Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 1999, the text of subdivision 85 shall be replaced by the following:

A change to tariff items 8528.12.28 or 8528.12.32 from any other heading, except from tariff items 8529.90.43, 8529.90.46, 8529.90.49 or 8540.11.10 or except from tariff items 7011.20.10 or 8540.91.15.

Tariff item rule: The following rule applies to a good of tariff items 8528.12.36 or 8528.12.40 incorporating a picture tube of tariff items 8540.12.10 or 8540.12.50 that incorporates a glass panel referred to in subparagraph (b) of note 5 to chapter 85 and a glass cone provided for in tariff item 7011.20.10.

86. A change to tariff items 8528.12.36 or 8528.12.40 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff items 8540.12.10, 8540.12.50 or 8540.12.99 or from tariff items 7011.20.10 or 8540.91.15.

Tariff item rule: The following rule applies to a good of tariff items 8528.12.36 or 8528.12.40 incorporating a picture tube of tariff items 8540.12.10 or 8540.12.50 that incorporates a glass envelope referred to in subparagraph (b) of note 5 of chapter 85.

87. A change to tariff items 8528.12.36 or 8528.12.40 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff items 8540.12.10, 8540.12.50 or 8540.91.15.

88. (A) A change to tariff items 8528.12.44 or 8528.12.48 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff items 8540.11.30, 8540.11.44, 8540.11.48 or 8540.91.15. In addition, no more than half the number of semiconductors of tariff items 8542.13.40, 8542.14.40 or 8542.19.40, used in the television receiver component, may be non-originating; or

(B) A change to tariff items 8528.12.44 or 8528.12.48 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff items 8540.11.30, 8540.11.44, 8540.11.48 or 8540.91.15. In addition, the regional value content must be not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

89. (A) A change to tariff items 8528.12.52 or 8528.12.56 or Mexican tariff item 8528.12.05 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff items 8540.12.20, 8540.12.70 or 8540.91.15. In addition, no more than half the number of semiconductors of tariff item 8542.13.40, 8542.14.40 or 8542.19.40, used in the television receiver component, may be non-originating; or

(B) A change to tariff items 8528.12.52 or 8528.12.56 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff items 8540.12.20, 8540.12.70 or 8540.91.15. In addition, the regional value content must be not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

90. A change to tariff items 8528.12.62, 8528.12.64, 8528.12.68 or 8528.12.72 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff item 8529.90.53.

91. A change to tariff items 8528.12.04 or 8528.12.08 from any other heading, except from tariff items 8529.90.43, 8529.90.46 or 8529.90.49.

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51. TCRs 84 through 92, inclusive, for chapter 85 are deleted and the following new TCRs for such chapter are inserted in numerical sequence (continued):

92. A change to subheading 8528.12 from tariff items 8528.12.04 or 8528.12.08 or any other heading, provided there is a regional value content of not less than:

(A) 60 percent where the transaction value method is used, or

(B) 50 percent where the net cost method is used.

92A. A change to subheading 8528.13 from any other heading, provided that, with respect to printed circuit assemblies (PCAs) of tariff items 8529.90.01, 8529.90.03, 8529.90.06, 8529.90.09, 8529.90.13, 8529.90.16, 8529.90.19, 8529.90.23, 8529.90.29, 8529.90.33, 8529.90.36 or 8529.90.39

(A) except as provided in subparagraph (b), for each multiple of nine PCAs, or any portion thereof, that is contained in the good, only one PCA may be a non-originating PCA, and

(B) if the good contains less than three PCAs, all of the PCAs must be originating PCAs.

92B. A change to tariff items 8528.21.16, 8528.21.19, 8528.21.24 or 8528.21.29 from any other heading, except from tariff items 8529.90.01, 8529.90.03, 8529.90.06, 8529.90.09, 8529.90.13, 8529.90.16, 8529.90.19, 8529.90.23, 8529.90.29, 8529.90.33, 8529.90.36, 8529.90.39, 8529.90.43, 8529.90.46 or 8529.90.49.

92C. A change to tariff items 8528.21.34 or 8528.21.39 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff item 8540.11.10 or from tariff items 7011.20.10 or 8540.91.15.

Tariff item rule: Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 1999, the text of subdivision 92C shall be replaced by the following:

A change to tariff items 8528.21.34 or 8528.21.39 from any other heading, except from tariff items 8529.90.43, 8529.90.46, 8529.90.49 or 8540.11.10 or from tariff items 7011.20.10 or 8540.91.15.

92D. A change to tariff items 8528.21.41 or 8528.21.42 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff items 8540.12.10 or 8540.12.50 or from tariff items 7011.20.10 or 8540.91.15.

Tariff item rule: The following rule applies to a good of tariff items 8528.21.41 or 8528.21.42 incorporating a picture tube of tariff items 8540.12.10 or 8540.12.50 that incorporates a glass envelope referred to in subparagraph (b) of note 5 to chapter 85.

92E. A change to tariff items 8528.21.41 or 8528.21.42 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff items 8540.12.10, 8540.12.50 or 8540.91.15.

92F. (A) A change to tariff items 8528.21.44 or 8528.21.49 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff items 8540.11.30, 8540.11.44, 8540.11.48 or 8540.91.15. In addition, no more than half the number of semiconductors of tariff items 8542.13.40, 8542.14.40 or 8542.19.40, used in the video monitor component, may be non-originating; or

(B) A change to tariff items 8528.21.44 or 8528.21.49 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff items 8540.11.30, 8540.11.44, 8540.11.48 or 8540.91.15. In addition, the regional value content must be 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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51. TCRs 84 through 92, inclusive, for chapter 85 are deleted and the following new TCRs for such chapter are inserted in numerical sequence (continued):

92G. (A) A change to tariff items 8528.21.51 or 8528.21.52 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff items 8540.12.20, 8540.12.70 or 8540.91.15. In addition, no more than half the number of semiconductors of tariff items 8542.13.40, 8542.14.40 or 8542.19.40, used in the video monitor component, may be non-originating; or

(B) A change to tariff items 8528.21.51 or 8528.21.52 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff items 8540.12.20, 8540.12.70 or 8540.91.15. In addition, the regional value content must be not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

92H. A change to tariff items 8528.21.55, 8528.21.60, 8528.21.65 or 8528.21.70 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff item 8529.90.53.

92I. A change to tariff items 8528.21.05 or 8528.21.10 or from any other heading, except from tariff items 8529.90.43, 8529.90.46 or 8529.90.49.

92J. A change to subheading 8528.21 from tariff items 8528.21.05 or 8528.21.10 or any other heading, provided there is a regional value content of not less than:

(A) 60 percent where the transaction value method is used, or

(B) 50 percent where the net cost method is used.

92K. A change to subheading 8528.22 from any other heading, provided that, with respect to printed circuit assemblies (PCAs) of tariff items 8529.90.01, 8529.90.03, 8529.90.06, 8529.90.09, 8529.90.13, 8529.90.16, 8529.90.19, 8529.90.23, 8529.90.29, 8529.90.33, 8529.90.36 or 8529.90.39:

(A) except as provided in subparagraph (b), for each multiple of nine PCAs, or any portion thereof, that is contained in the good, only one PCA may be a non-originating PCA, and

(B) if the good contains less than three PCAs, all of the PCAs must be originating PCAs.

Tariff item rule: The following rule applies to a good of tariff items 8528.30.30 or 8528.30.40 incorporating a picture tube of tariff items 8540.12.10 or 8540.12.50 that incorporates a glass panel referred to in subparagraph (b) of note 5 to chapter 85 and a glass cone provided for in tariff item 7011.20.10.

92L. A change to tariff items 8528.30.30 or 8528.30.40 from tariff items 8528.30.10 or 8528.30.20 or any other heading, except from tariff items 8540.12.10 or 8540.12.50 or tariff items 7011.20.10 or 8540.91.15.

Tariff item rule: The following rule applies to a good of tariff items 8528.30.30 or 8528.30.40 incorporating a picture tube of tariff items 8540.12.10 or 8540.12.50 that incorporates a glass envelope referred to in subparagraph (b) of note 5 of chapter 85:

92M. A change to tariff items 8528.30.30 or 8528.30.40 from tariff items 8528.30.10 or 8528.30.20 or any other heading, except from tariff items 8540.12.10, 8540.12.50 or 8540.91.15.

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51. TCRs 84 through 92, inclusive, for chapter 85 are deleted and the following new TCRs for such chapter are inserted in numerical sequence (continued):

92N. (A) A change to tariff items 8528.30.50 or 8528.30.60 from tariff items 8528.30.10 or 8528.30.20 or any other heading, except from tariff items 8540.12.20, 8540.12.70 or 8540.91.15. In addition, no more than half the number of semiconductors of tariff items 8542.13.40, 8542.14.40 or 8542.19.40, used in the video projector component, may be non-originating; or

(B) A change to tariff items 8528.30.50 or 8528.30.60 from tariff items 8528.30.10 or 8528.30.20 or any other heading, except from tariff item 8540.12.20, 8540.12.70 or 8540.91.15. In addition, the regional value content must be not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

92O. A change to tariff items 8528.30.62, 8528.30.64, 8528.30.66 or 8528.30.68 from tariff items 8528.30.10 or 8528.30.20 or any other heading, except from tariff item 8529.90.53.

92P. A change to tariff items 8528.30.10 or 8528.30.20 from any other heading, except from tariff items 8529.90.43, 8529.90.46 or 8529.90.49.

92Q. A change to subheading 8528.30 from tariff items 8528.30.10 or 8528.30.20 or any other heading, provided there is a regional value content of not less than:

(A) 60 percent where the transaction value method is used, or

(B) 50 percent where the net cost method is used."

52. TCR 123(A) and (B) for chapter 85 are modified by deleting "8539.40" at each instance and by inserting in lieu thereof "8539.49".

53. TCRs 135 and 136 for chapter 85 are deleted and the following new TCRs are inserted in numerical sequence:

"135. A change to subheadings 8540.40 through 8540.60 from any subheading outside that group, except from tariff item 8540.91.15.

136. A change to subheadings 8540.71 through 8540.79 from any subheading outside that group, except from tariff item 8540.99.40."

54. The subheading rule immediately preceding TCR 142 for chapter 85 is modified by deleting "8542.11 through 8542.80" and by inserting in lieu thereof "8542.12 through 8542.50".

55. TCR 143(A) and (B) for chapter 85 are modified by deleting at each instance "8543.10 through 8543.30" and by inserting in lieu thereof "8543.11 through 8543.81".

56. TCR 144(A) and (B) for chapter 85 are modified by deleting at each instance "8543.80.85" and by inserting in lieu thereof "8543.89.80".

57. TCR 145(A) and (B) for chapter 85 are modified by deleting at each instance "8543.80" and by inserting in lieu thereof "8543.89".

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58(a). TCR 149 for chapter 85 is modified by deleting "8548" and by inserting in lieu thereof "8547".

(b). The following new TCRs for chapter 85 are inserted in numerical sequence:

"150. A change to subheading 8548.10 from any other chapter.

151. A change to subheading 8548.90 from any other heading."

59. TCR 15 for chapter 90 is deleted and the following new TCR 15 is inserted in lieu thereof:

"15. (A) A change to subheading 9007.20 from any other heading; or

(B) A change to subheading 9007.20 from subheading 9007.92, 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 is used."

60. TCR 25(A) and (B) for chapter 90 are modified by deleting at each instance "9010.30" and by inserting in lieu thereof "9010.60".

61. New TCR 41A for chapter 90 is inserted immediately after TCR 41 for such chapter:

"41A. A change to subheadings 9018.12 through 9018.14 from any other heading."

62. TCR 48 for chapter 90 is deleted and the following new TCR 48 is inserted in lieu thereof:

"48. A change to subheadings 9022.12 through 9022.14 from any subheading outside that group, except from tariff item 9022.90.05."

63. TCR 74 for chapter 90 is modified by deleting "9031.40.40" and by inserting in lieu thereof "9031.49.40"; TCRs 74 and 75 are redesignated as TCRs 75 and 75A, respectively; and the following new TCR 74 is inserted immediately before redesignated TCR 75:

"74. (A) A change to subheading 9031.41 from any other heading; or

(B) A change to subheading 9031.41 from subheading 9031.90, 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 is used."

64. TCR 75A(A) and (B) for chapter 90 (as redesignated) are modified by deleting at each instance "9031.40" and by inserting in lieu thereof "9031.49".

65. TCRs 12 and 13 for chapter 96 are deleted and the following new TCRs are inserted in numerical sequence:

"12. A change to tariff item 9614.20.10 from any other chapter.

13. A change to subheading 9614.20 from tariff item 9614.20.10 or any other subheading, except from subheading 9614.90."

Other modifications to the general notes to the HTS:

1. General note 18 is modified by inserting after the expression "MPa - megapascals" the following expression: "MW - megawatts".

Annex II

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTS)

The HTS is modified as provided below, with bracketed matter included to assist in the understanding of the proclaimed modifications. The following supersedes matter now in the HTS. The subheadings and superior texts 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.

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the later of (1) January 1, 1996, or (2) the fifteenth day after the date of publication of this proclamation in the Federal Register, the HTS is modified as provided herein:

1(a). The superior text to subheading 0105.11.00 reading "Weighing not over 185 g each:" is modified to read "Weighing not more than 185 g:".

(b). Subheadings 0105.19.00 through 0105.91.00 are superseded by the following:

	[Live...:]			
	[Weighing...:]			
"0105.12.00	Turkeys	1.6¢ each	Free (E,IL,J,MX) 0.4¢ each (CA)	4¢ each
0105.19.00	Other	1.6¢ each	Free (E,IL,J,MX) 0.4¢ each (CA)	4¢ each
	[Other:]			
0105.92.00	Chickens, weighing not more than 2,000 g	3.6¢/kg	Free (E,IL,J,MX) 0.8¢/kg (CA)	17.6¢/kg
0105.93.00	Chickens, weighing more than 2,000 g	3.6¢/kg	Free (E,IL,J,MX) 0.8¢/kg (CA)	17.6¢/kg"

2. Subheadings 0207.10 through 0207.50.00 are superseded by the following:

	[Meat...:]			
	"Of chickens:			
0207.11.00	Not cut in pieces, fresh or chilled	10.3¢/kg	Free (E,IL,J,MX) 2.2¢/kg (CA)	22¢/kg
0207.12.00	Not cut in pieces, frozen	10.3¢/kg	Free (E,IL,J,MX) 2.2¢/kg (CA)	22¢/kg
0207.13.00	Cuts and offal, fresh or chilled	20.5¢/kg	Free (E,IL,J,MX) 4.4¢/kg (CA)	22¢/kg
0207.14.00	Cuts and offal, frozen	20.5¢/kg	Free (E,IL,J,MX) 4.4¢/kg (CA)	22¢/kg
	Of turkeys:			
0207.24.00	Not cut in pieces, fresh or chilled	17.5¢/kg	Free (E,IL,J,MX) 3.7¢/kg (CA)	22¢/kg
0207.25	Not cut in pieces, frozen:			
0207.25.20	Valued less than 88¢/kg	10.3¢/kg	Free (E,IL,J,MX) 2.2¢/kg (CA)	22¢/kg
0207.25.40	Valued 88¢ or more per kg	11.7%	Free (E,IL,J,MX) 2.5% (CA)	25%

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2. (con.):

	[Meat...:] [con.]			
	Of turkeys (con.):			
0207.26.00	Cuts and offal, fresh or chilled.....	20.5¢/kg	Free (E,IL,J,MX) 4.4¢/kg (CA)	22¢/kg
0207.27.00	Cuts and offal, frozen.....	20.5¢/kg	Free (E,IL,J,MX) 4.4¢/kg (CA)	22¢/kg
	Of ducks, geese or guineas:			
0207.32.00	Not cut in pieces, fresh or chilled.....	10.3¢/kg	Free (E,IL,J,MX) 2.2¢/kg (CA)	22¢/kg
0207.33.00	Not cut in pieces, frozen.....	10.3¢/kg	Free (A,E,IL,J, MX) 2.2¢/kg (CA)	22¢/kg
0207.34.00	Fatty livers, fresh or chilled.....	20.5¢/kg	Free (E,IL,J,MX) 4.4¢/kg (CA)	22¢/kg
0207.35.00	Other, fresh or chilled.....	20.5¢/kg	Free (E,IL,J,MX) 4.4¢/kg (CA)	22¢/kg
0207.36.00	Other, frozen.....	20.5¢/kg	Free (E,IL,J,MX) 4.4¢/kg (CA)	22¢/kg"

3. The article description of heading 0209.00.00 is modified to read as follows:

"Pig fat, free of lean meat, and poultry fat, not rendered or otherwise extracted, fresh, chilled, frozen, salted, in brine, dried or smoked"

4. The article description of subheading 0301.91.00 is modified to read as follows:

"Trout (Salmo trutta, Oncorhynchus mykiss, Oncorhynchus clarki, Oncorhynchus aguabonita, Oncorhynchus gilae, Oncorhynchus apache and Oncorhynchus chrysogaster)"

5. The article description of subheading 0302.11.00 is modified to read as follows:

"Trout (Salmo trutta, Oncorhynchus mykiss, Oncorhynchus clarki, Oncorhynchus aguabonita, Oncorhynchus gilae, Oncorhynchus apache and Oncorhynchus chrysogaster)"

6. The article description of subheading 0302.12.00 is modified to read as follows:

"Pacific salmon (Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou and Oncorhynchus rhodurus), Atlantic salmon (Salmo salar) and Danube salmon (Hucho hucho)"

7. The article description of subheading 0303.10.00 is modified to read as follows:

"Pacific salmon (Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou and Oncorhynchus rhodurus), excluding livers and roes"

8. The article description of subheading 0303.21.00 is modified to read as follows:

"Trout (Salmo trutta, Oncorhynchus mykiss, Oncorhynchus clarki, Oncorhynchus aguabonita, Oncorhynchus gilae, Oncorhynchus apache and Oncorhynchus chrysogaster)"

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9. The article description of subheading 0305.41.00 is modified to read as follows:

"Pacific salmon (Oncorhynchus nerka, Oncorhynchus gorbuscha, Oncorhynchus keta, Oncorhynchus tschawytscha, Oncorhynchus kisutch, Oncorhynchus masou and Oncorhynchus rhodurus), Atlantic salmon (Salmo salar) and Danube salmon (Hucho hucho)"

10. Notes 2 and 3 to chapter 4 are renumbered as 3 and 4, respectively, and the following new note 2 is inserted:

"2. For the purposes of heading 0405:

(a) The term "butter" means natural butter, whey butter or recombined butter (fresh, salted or rancid, including canned butter) derived exclusively from milk, with a milkfat content of 80 percent or more but not more than 95 percent by weight, a maximum milk solids-not-fat content of 2 percent by weight and a maximum water content of 16 percent by weight. Butter does not contain added emulsifiers, but may contain sodium chloride, food colors, neutralizing salts and cultures of harmless lactic-acid-producing bacteria.

(b) The expression "dairy spreads" means a spreadable emulsion of the water-in-oil type, containing milkfat as the only fat in the product, with a milkfat content of 39 percent or more but less than 80 percent by weight."

11. The following new subheading note 2 to chapter 4 is inserted:

"2. For the purposes of subheading 0405.10 the term "butter" does not include dehydrated butter or ghee (subheading 0405.90)."

12. Heading 0405.00 and subheadings 0405.00.05 through 0405.00.90, inclusive, are superseded by the following:

"0405	Butter and other fats and oils derived from milk; dairy spreads:			
0405.10	Butter:			
0405.10.05	Described in general note 15 of the tariff schedule and entered pursuant to its provisions.....	12.3¢/kg	Free (E,IL,J,MX) 2.4¢/kg (CA)	30.9¢/kg
0405.10.10	Described in additional U.S. note 6 to this chapter and entered pursuant to its provisions.....	12.3¢/kg	Free (E,IL,J) 2.4¢/kg (CA)	30.9¢/kg
0405.10.20	Other.....	$1.722/kg	See 9906.04.75-9906.04.77 (MX)	$1.813/kg
0405.20	Dairy spreads: Butter substitutes, whether in liquid or solid state: Containing over 45 percent by weight of butterfat:			
0405.20.10	Described in general note 15 of the tariff schedule and entered pursuant to its provisions.....	15.4¢/kg	Free (E,IL,J,MX) 3¢/kg (CA)	31¢/kg
0405.20.20	Described in additional U.S. note 14 to this chapter and entered pursuant to its provisions.....	15.4¢/kg	Free (E,IL,J) 3¢/kg (CA)	31¢/kg
0405.20.30	Other.....	$2.231/kg	See 9906.06.40-9906.06.42 (MX)	$2.348/kg

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12. (con.):

0405 (con.)	Butter and other fats and oils derived from milk; dairy spreads (con.):			
0405.20 (con.)	Dairy spreads (con.):			
	Butter substitutes, whether in liquid or solid state (con.):			
0405.20.40	Other.....	14.6¢/kg	Free (E,IL,J) 3¢/kg (CA) 10.7¢/kg (MX)	31¢/kg
	Other:			
	Dairy products described in additional U.S. note 1 to chapter 4:			
0405.20.50	Described in general note 15 of the tariff schedule and entered pursuant to its provisions.....	10%	Free (E,IL,J,MX) 2% (CA)	20%
0405.20.60	Described in additional U.S. note 10 to this chapter and entered pursuant to its provisions.....	10%	Free (E,IL,J) 2% (CA)	20%
0405.20.70	Other.....	78.7¢/kg + 9.5%	See 9906.06.43-9906.06.45 (MX)	82.8¢/kg + 10%
0405.20.80	Other.....	8.8%	Free (A,E,IL,J,MX) 2% (CA)	20%
0405.90	Other:			
0405.90.05	Described in general note 15 of the tariff schedule and entered pursuant to its provisions.....	10%	Free (E,IL,J,MX) 2% (CA)	20%
0405.90.10	Described in additional U.S. note 14 to this chapter and entered pursuant to its provisions.....	10%	Free (E,IL,J) 2% (CA)	20%
0405.90.20	Other.....	$2.084/kg + 9.5%	See 9906.04.78-9906.04.80 (MX)	$2.194/kg + 10%"

Conforming changes:

(a). Additional U.S. note 6 to chapter 4 is modified by deleting "0405.00.20" and by inserting in lieu thereof "0405.10.10".

(b). Additional U.S. note 10 to chapter 4 is modified by inserting " 0405.20.60," immediately after "0404.90.30,".

(c). Additional U.S. note 14 to chapter 4 is modified by deleting "0405.00.60" and by inserting in lieu thereof "0405.20.20, 0405.90.10".

(d)(1). The superior text to subheadings 9904.04.09 through 9904.04.21 beginning with the word "Butter," is modified by deleting "0405.00.40" and inserting in lieu thereof "0405.10.20".

(2). Subheading 9904.04.21 is modified by deleting "0405.00.40" and inserting in lieu thereof "0405.10.20".

(e). The superior text to subheadings 9904.04.50 through 9904.05.01 beginning with the word "Dairy" is modified by inserting "0405.20.70," immediately after "0404.90.50,".

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12. (con.)

Conforming changes (con.):

(f). The immediately superior text to subheadings 9904.04.59 through 9904.04.66 is modified by inserting " 0405.20.70," immediately after "0404.10.15,".

(g). Subheading 9904.04.99 is modified by deleting "subheading 2106.90.66" and inserting in lieu thereof "subheadings 0405.20.70 or 2106.90.66".

(h)(1). The superior text to subheadings 9904.05.37 through 9904.05.47 beginning with the word "Butter" is modified by deleting "0405.00.90," and inserting in lieu thereof "0405.20.30, 0405.90.20,".

(2). Subheading 9904.05.46 is modified by deleting "0405.00.90" and inserting in lieu thereof "0405.90.20".

(3). Subheading 9904.05.47 is modified by inserting "0405.20.30," immediately before "2106.90.26".

(i). Subheading 9905.21.10 is modified by inserting "0405.20.80," immediately before "2106.90.82".

(j). The superior text to subheadings 9906.04.75 through 9906.04.77 that begins with the word "Butter" is modified by inserting "; dairy spreads" immediately after "milk", and the immediately superior text to subheading 9906.04.75 is modified by deleting "0405.00.40" and inserting in lieu thereof "0405.10.20".

(k). The immediately superior text to subheadings 9906.04.78 through 9906.04.80 is modified by deleting "0405.00.90" and inserting in lieu thereof "0405.90.20".

(l). U.S. note 5 to subchapter VI of chapter 99 is modified by inserting ", 9906.06.40" immediately after "9906.04.78".

(m). U.S. note 7 to subchapter VI of chapter 99 is modified by inserting "9906.06.43," immediately before "9906.15.01,".

(n). Subchapter VI of chapter 99 is modified by inserting the following provisions immediately after subheading 9906.06.39:

	[Goods of Mexico,...:]	
	"Butter and other fats and oils derived from milk; dairy spreads:	
	Provided for in subheading 0405.20.30:	
9906.06.40	Subject to the quantitative limits specified in U.S. note 5 to this subchapter.....	Free (MX)
	Other:	
9906.06.41	Valued not over $1.57/kg.....	$1.054/kg (MX)
9906.06.42	Other.....	67% (MX)
	Provided for in subheading 0405.20.70:	
9906.06.43	Subject to the quantitative limits specified in U.S. note 7 to this subchapter.....	Free (MX)
	Other:	
9906.06.44	Valued not over 74.8¢/kg.....	49.2¢/kg (MX)
9906.06.45	Other.....	65.7% (MX)"

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13. The article description of heading 0504.00.00 is modified to read as follows:

"Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked"

14. Subheadings 0602.91.00 through 0602.99.90 and the immediately preceding superior text "Other:" are superseded by the following:

	[Other...:]			
"0602.90	Other:			
	Herbaceous perennials:			
0602.90.20	Orchid plants.....	Free		25%
	Other:			
0602.90.30	With soil attached to roots....	1.4%	Free (A,E,IL,J, MX) 0.4% (CA)	30%
0602.90.40	Other.....	4.8%	Free (A,E,IL,J, MX) 1.1% (CA)	30%
	Other:			
0602.90.50	Mushroom spawn.....	1.9¢/kg	Free (CA,E,IL,J, MX)	2.2¢/kg
	Other:			
0602.90.60	With soil attached to roots....	1.9%	Free (A,E,IL,J, MX) 0.6% (CA)	25%
0602.90.90	Other.....	6.6%	Free (A,E,IL,J, MX) 1.5% (CA)	25%"

15. Subdivisions (c) and (d) of note 3 to chapter 7 are modified to read as follows:

"(c) flour, meal, powder, flakes, granules and pellets of potatoes (heading 1105);

(d) flour, meal and powder of the dried leguminous vegetables of heading 0713 (heading 1106)."

16(a). Subheading 0712.10.00 is deleted.

(b). The following new subheading 0712.90.30 is inserted in numerical order:

	[Dried...:]			
	[Other...:]			
"0712.90.30	Potatoes whether or not cut or sliced but not further prepared.....	2.7¢/kg	Free (A,CA,E,IL, J) 1.1¢/kg (MX)	6¢/kg"

17(a). The article description of heading 0714 is modified to read as follows:

"Cassava (manioc), arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, fresh, chilled, frozen or dried, whether or not sliced or in the form of pellets; sago pith:"

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17. (con.)

(b). Subheadings 0714.10.00 and 0714.20.00 are superseded by the following:

	[Cassava...:]			
"0714.10	Cassava (manioc):			
0714.10.10	Frozen.....	7.9%	Free (A,E,IL,J, MX) 3.5% (CA)	35%
0714.10.20	Other.....	11.3%	Free (A*,E,IL,J, MX) 5% (CA)	50%
0714.20	Sweet potatoes:			
0714.20.10	Frozen.....	6.7%	Free (A,E,IL,J, MX) 1.4% (CA)	35%
0714.20.20	Other.....	8.2%	Free (A*,E,IL,J, MX) 2% (CA)	50%"

Conforming changes: The immediately superior text to subheading 0714.90.10 reading "Fresh:" is modified to read "Fresh or chilled:", and general note 4(d) is modified by deleting "0714.10.00 Costa Rica" and "0714.20.00 Dominican Republic" and by inserting in numerical sequence "0714.10.20 Costa Rica" and "0714.20.20 Dominican Republic".

(c). The following new subheading 0714.90.45 is inserted in numerical sequence:

	[Cassava...:]			
	[Other:]			
"0714.90.45	Frozen.....	6.7%	Free (A,E,IL,J, MX) 1.4% (CA)	35%"

18. Subheadings 0801.10.00 through 0801.30.00 are superseded by the following:

	[Coconuts,...:]		
	"Coconuts:		
0801.11.00	Desiccated.....	Free	7.7¢/kg
0801.19.00	Other.....	Free	7.7¢/kg
	Brazil nuts:		
0801.21.00	In shell.....	Free	9.9¢/kg
0801.22.00	Shelled.....	Free	9.9¢/kg
	Cashew nuts:		
0801.31.00	In shell.....	Free	4.4¢/kg
0801.32.00	Shelled.....	Free	4.4¢/kg"

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19. Subheadings 0807.10 through 0807.10.80, inclusive, are superseded by the following:

	[Melons...:]				
	"Melons (including watermelons):				
0807.11	Watermelons:				
0807.11.30	If entered during the period from December 1, in any year, to the following March 31, inclusive.....	16.3%	Free (A,E,IL,J, MX) 4% (CA)	35%
0807.11.40	If entered at any other time.....	19%	Free (E,IL,J) 4% (CA) See 9906.08.09-9906.08.11 (MX)	35%
0807.19	Other:			
	Cantaloupes:			
0807.19.10	If entered during the period from August 1 to September 15, inclusive, in any year.....	17.6%	Free (E,IL,J) 4% (CA) 14% (MX)	35%
0807.19.20	If entered at any other time...	33.3%	Free (A,E,IL,J) 7% (CA) See 9906.08.07-9906.08.08 (MX)	35%
	Ogen and Galia melons:			
0807.19.50	If entered during the period from December 1, in any year, to the following May 31, inclusive.....	2.9%	Free (A,CA,E,IL, J,MX)	35%
0807.19.60	If entered at any other time...	11.4%	Free (A,E,IL,J, MX) 2.8% (CA)	35%
	Other:			
0807.19.70	If entered during the period from December 1, in any year, to the following May 31, inclusive.....	7.5%	Free (A,CA,E,IL, J) See 9906.08.12-9906.08.13 (MX)	35%
0807.19.80	If entered at any other time...	32.7%	Free (E,IL,J) 7% (CA) 28% (MX)	35%"

20. The following new subheading 0810.50.00 is inserted in numerical order:

	[Other...:]			
"0810.50.00	Kiwi fruit.....	Free		2.8¢/kg"

Conforming changes: Subheading 0810.90.20 is redesignated as 0810.90.25, and the article description of that subheading is modified to read as follows: "Berries and tamarinds".

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21. Subheadings 0901.30.00 and 0901.40.00 are superseded by the following:

	[Coffee,...:]				
"0901.90	Other:				
0901.90.10	Coffee husks and skins.....	Free			10%
0901.90.20	Coffee substitutes containing coffee.....	2.7¢/kg	Free (CA,E,IL,J, MX)		6.6¢/kg"

22. Subdivision (A) of note 2 to chapter 11 is modified by adding after the last sentence the following new sentence:

"However, germ of cereals, whole, rolled, flaked or ground is always classified in heading 1104."

23. The article description of heading 1105 is modified to read as follows:

"Flour, meal, powder, flakes, granules and pellets of potatoes:"

24. The article description of subheading 1105.10.00 is modified to read as follows:

"Flour, meal and powder"

25. The article description of heading 1106 is modified to read as follows:

"Flour, meal and powder of the dried leguminous vegetables of heading 0713, of sago or of roots or tubers of heading 0714 or of the products of chapter 8:"

26. The article description of subheading 1106.10.00 is modified to read as follows:

"Of the dried leguminous vegetables of heading 0713"

27. The article description of subheading 1106.20.00 is modified to read as follows:

"Of sago or of roots or tubers of heading 0714"

28. The article description of subheading 1106.30 is modified to read as follows:

"Of the products of chapter 8:"

29. The article description of heading 1212 is modified by deleting the expression "fresh or dried," and inserting the expression "fresh, chilled, frozen or dried," in lieu thereof.

30. Subdivision (d) of note 1 to chapter 13 is modified to read as follows:

"(d) Vegetable saps or extracts constituting alcoholic beverages (chapter 22);"

31. Subdivision (h) of note 1 to chapter 13 is modified to read as follows:

"(h) Essential oils, concretes, absolutes, resinoids, extracted oleoresins, aqueous distillates or aqueous solutions of essential oils or preparations based on odoriferous substances of a kind used for the manufacture of beverages (chapter 33); or"

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32. The article description of heading 1301 is modified to read as follows:

"Lac; natural gums, resins, gum-resins and oleoresins (for example, balsams):"

33. Subheading 1402.91.00, the superior text thereto, and subheading 1402.99.00 are superseded by the following:

	[Vegetable...:]			
"1402.90	Other:			
1402.90.10	Vegetable hair.....	0.5¢/kg	Free (CA,E,IL,J, MX)	2.2¢/kg
1402.90.90	Other.....	Free		20%"

34. Subdivision (e) of note 1 to chapter 15 is modified by deleting the expression "in an isolated state".

35. The article description of heading 1501.00.00 is modified to read as follows:

"Pig fat (including lard) and poultry fat, other than that of heading 0209 or 1503"

36. The article description of heading 1502.00.00 is modified to read as follows:

"Fats of bovine animals, sheep or goats, other than those of heading 1503"

37. Heading 1519 and subheadings 1519.11.00 through 1519.20.60 are deleted.

Conforming change: General note 4(d) is modified by deleting "1519.11.00 Malaysia" and "1519.12.00 Malaysia", and by inserting in numerical sequence "3823.11.00 India; Malaysia" and "3823.12.00 India; Malaysia" in lieu thereof.

38. Heading 1520 and subheadings 1520.10.00 and 1520.90.00 are superseded by the following:

"1520.00.00	Glycerol, crude; glycerol waters and glycerol lyes.....	Free		2.2¢/kg"

39. Note 1 to chapter 16 is modified by inserting the expression "or heading 0504" after the expression "chapter 2 or 3".

40. The following new subheading is inserted in numerical order:

	[Other...:]			
	[Of...:]			
"1602.32.00	Of chickens.....	8.8%	Free (A,E,IL,J, MX) 2% (CA)	20%"

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41. Subheading 1702.10.00 is superseded by the following:

	[Other...:]				
	"Lactose and lactose syrup:				
1702.11.00	Containing by weight 99 percent or more lactose, expressed as anhydrous lactose, calculated on the dry matter....	8.8%	Free (E,IL,J,MX) 2% (CA)	50%	
1702.19.00	Other.....	8.8%	Free (E,IL,J,MX) 2% (CA)	50%"	

42(a). Subheading 1704.90.20 is superseded by the following:

	[Sugar...:]				
	[Other:]				
	[Confections...:]				
	"Other:				
1704.90.25	Cough drops.....	Free		30%	
1704.90.35	Other.....	6.5%	Free (A,E,IL,J, MX) 1.4% (CA)	40%"	

(b). The following new additional U.S. note 11 is inserted in chapter 17:

"11. For the purposes of subheading 1704.90.25, "cough drops" must contain a minimum of 5 mg per dose of menthol, of eucalyptol, or of a combination of menthol and eucalyptol."

43. Note 3 to chapter 19 is modified to read as follows:

"3. Heading 1904 does not cover preparations containing more than 6 percent by weight of cocoa calculated on a totally defatted basis or coated with chocolate or other food preparations containing cocoa of heading 1806 (heading 1806)."

44. The article description of heading 1901 is modified to read as follows:

"Malt extract; food preparations of flour, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:"

45. The article description of heading 1904 is modified by deleting the language following the semicolon and inserting the following in lieu thereof:

"cereals (other than corn (maize)) in grain form or in the form of flakes or other worked grains (except flour and meal), pre-cooked or otherwise prepared, not elsewhere specified or included:"

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46. The following new subheadings 1904.20, 1904.20.10 and 1904.20.90 are inserted in numerical order:

	[Prepared...:]			
"1904.20	Prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals:			
1904.20.10	In airtight containers and not containing apricots, citrus fruits, peaches or pears.....	6.5%	Free (E,IL,J) 1.4% (CA) 4.9% (MX)	35%
1904.20.90	Other.....	16.6%	Free (E,IL,J) 3.5% (CA) 7% (MX)	35%"

47. The article description of heading 2004 is modified to read as follows:

"Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006:"

48(a). The article description of heading 2005 is modified to read as follows:

"Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006:"

(b). Subheading 2005.30.00 is deleted.

(c). The following new subheading 2005.90.30 is inserted in numerical order:

	[Other...:]			
	[Other...:]			
"2005.90.30	Sauerkraut.....	6.6%	Free (E,IL,J) 1.5% (CA) 3% (MX)	50%"

49. The article description of heading 2006.00 is modified to read as follows:

"Vegetables, fruit, nuts, fruit-peel and other parts of plants preserved by sugar (drained, glacé, or crystallized):"

50. Subdivision (f) of note 1 to chapter 21 is deleted, and subdivisions (g) and (h) are redesignated as (f) and (g), respectively.

51(a). The numerical subheading code "2101.10" is deleted; the article description is modified to read as follows:

"Extracts, essences and concentrates of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee".

(b). The superior text reading "Extracts, essences and concentrates:" is designated as subheading 2101.11, and subheadings 2101.10.21 and 2101.10.29 are redesignated as 2101.11.21 and 2101.11.29, respectively.

(c). The superior text reading "Other:" is designated as subheading 2101.12 and is modified to read as follows:

"Preparations with a basis of extracts, essences or concentrates or with a basis of coffee:"

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51. (con.)

(d). Subheadings 2101.10.32, 2101.10.34, 2101.10.38, 2101.10.44, 2101.10.48, 2101.10.54, 2101.10.58, and 2101.10.90 are redesignated as 2101.12.32, 2101.12.34, 2101.12.38, 2101.12.44, 2101.12.48, 2101.12.54, 2101.12.58, and 2101.12.90, respectively; additional U.S. note 7 to chapter 17 is modified by deleting "2101.10.44" and inserting in lieu thereof "2101.12.44"; additional U.S note 8 to chapter 17 is modified by deleting "2101.10.54" and inserting in lieu thereof "2101.12.54"; and additional U.S. note 9 to chapter 17 is modified by deleting "2101.10.34" and inserting in lieu thereof "2101.12.34".

52. The following new subheadings are inserted in numerical order:

	[Food...]			
	[Other:]			
	"Compound alcoholic preparations of an alcoholic strength by volume exceeding 0.5 percent vol., of a kind used for the manufacture of beverages:			
2106.90.12	Containing not over 20 percent of alcohol by weight.....	5.8¢/kg + 2.6%	Free (A,CA,E,IL, J,MX)	44¢/kg + 25%
2106.90.15	Containing over 20 percent but not over 50 percent of alcohol by weight.....	11.6¢/kg + 2.6%	Free (A,CA,E,IL, J,MX)	88¢/kg + 25%
2106.90.18	Containing over 50 percent of alcohol by weight.....	23.3¢/kg + 2.6%	Free (A,CA,E,IL, J,MX)	$1.76/kg + 25%"

53. The article description of heading 2206.00 is modified by inserting a comma after the expression "non-alcoholic beverages".

54(a). The article description of heading 2208 is modified to read as follows:

"Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol; spirits, liqueurs and other spirituous beverages:"

(b). Subheadings 2208.10 through 2208.10.90 are deleted.

(c). The following new subheadings are inserted in numerical order:

	[Undenatured...:]			
"2208.60	Vodka:			
	In containers each holding not over 4 liters:			
2208.60.10	Valued not over $2.05/liter.....	59.5¢/pf. liter	Free (A,CA,E,IL, J,MX)	$1.78/pf. liter
2208.60.20	Valued over $2.05/liter.....	11.6¢/pf. liter	Free (A,CA,E,IL, J,MX)	$1.78/pf. liter
2208.60.50	In containers each holding over 4 liters.....	29¢/pf. liter	Free (A*,CA,E, IL,J,MX)	$1.32/pf. liter
2208.70.00	Liqueurs and cordials.....	11.6¢/pf. liter	Free (A,CA,E,IL, J,MX)	$3.08/pf. liter"

Conforming change: General note 4(d) is modified by deleting "2208.90.70 Russia" and by inserting in numerical sequence "2208.60.50 Russia".

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54. (con.)

(d). Subheading 2208.90.45 is redesignated as 2208.90.46, and the text of that subheading is modified to read "Kirschwasser and ratafia".

(e). Subheadings 2208.90.60 through 2208.90.70, inclusive, and the immediately preceding superior text "Vodka:" and "In containers each holding not over 4 liters:" are deleted.

55. The following new subheading is inserted in numerical order:

	[Oilcake...:]			
"2306.70.00	Of corn (maize) germ.....	0.57¢/kg	Free (A,CA,E, IL,J,MX)	0.7¢/kg"

56. Subheading 2401.20.20 is superseded by the following:

	[Unmanufactured...:]			
	[Tobacco,...:]			
	[Not...:]			
	[Other:]			
	"Containing over 35 percent wrapper tobacco:			
2401.20.14	Wrapper tobacco.....	Free		$6.45/kg
2401.20.18	Other.....	Free		$6.45/kg"

57. Subdivision (g) of note 2 to chapter 25 is modified by deleting the expression "heading 3823" and inserting the expression "heading 3824" in lieu thereof.

58. Subheadings 2503, 2503.10.00 and 2503.90.00 are superseded by the following:

"2503.00.00	Sulfur of all kinds, other than sublimed sulfur, precipitated sulfur and colloidal sulfur.....	Free		Free"

59. Subheadings 2513.21.00 and 2513.29.00 and the immediately preceding superior text "Emery, natural corundum, natural garnet and other natural abrasives:" are superseded by the following:

	[Pumice;...:]			
"2513.20	Emery, natural corundum, natural garnet and other natural abrasives:			
2513.20.10	Crude or in irregular pieces.....	Free		Free
2513.20.90	Other.....	0.4¢/kg	Free (A,CA,E, IL,J,MX)	2.2¢/kg"

60. Subheading 2530.30.00 is deleted, the rate of duty in rate column numbered 2 of subheading 2530.90.00 is deleted, and the rate of duty of "0.3¢/kg" is inserted in lieu thereof.

61. Subdivision (e) of note 1 to chapter 26 is modified to read as follows:

"(e) Waste or scrap of precious metal or of metal clad with precious metal; other waste or scrap containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal (heading 7112); or"

Conforming change: Subheadings 2620.90.70, 2620.90.80 and 2620.90.90 are redesignated as 2620.90.60, 2620.90.75 and 2620.90.85, respectively.

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62. The article description of heading 2602.00.00 is modified by deleting the expression "manganiferous iron ores" and inserting the expression "ferruginous manganese ores" in lieu thereof.

63. The following new additional U.S. note 8 is inserted in numerical sequence in the additional U.S. notes to chapter 27:

"8. Subheading 2712.10.00 does not include petroleum jelly, suitable for use for the care of the skin, put up in packings of a kind sold at retail for such use (subheading 3304.99.10)."

64. Subheading 2707.60.00 is superseded by the following:

	[Oils...:]				
"2707.60	Phenols:				
2707.60.10	Metacresol, orthocresol, paracresol and metaparacresol, all the foregoing having a purity of 75 percent or more by weight.....	1¢/kg + 3.4%	Free (A,CA,E, IL,J,MX)	15.4¢/kg + 42.5%	
2707.60.20	Other.....	2.9¢/kg + 12.5%	Free (A,CA,E, IL,J,MX)	7.7¢/kg + 29.5%"	

Conforming change: Subheading 2707.99.30 is deleted.

65. Subdivision (d) of note 1 to chapter 28 is modified by inserting the expression "(including an anticaking agent)" after the word "stabilizer".

66. Subdivision (e) of note 3 to chapter 28 is modified by deleting the expression "heading 3823" at each instance, and inserting the expression "heading 3824" in lieu thereof.

67. Subdivision (g) of note 3 to chapter 28 is modified to read as follows:

"(g) The metals, whether or not pure, metal alloys or cermets, including sintered metal carbides (metal carbides sintered with a metal), of section XV; or"

68(a). Subheading 2827.37.00 is deleted.

(b). The following new subheading 2827.39.25 is inserted in numerical order:

	[Chlorides,...:]				
	[Other...:]				
	[Other:]				
"2827.39.25	Of tin.....	4.2%	Free (A*,CA,E, IL,J,MX)	25%"	

Conforming change: General note 4(d) to the tariff schedule is modified by deleting "2827.37.00 India" and by inserting in numerical sequence "2827.39.25 India" in lieu thereof.

69(a). Subheading 2835.21.00 is deleted.

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69. (con.)
(b). The following new subheading 2835.29.20 is inserted in numerical order:

	[Phosphinates...:]				
	[Phosphates:]				
	[Other:]				
"2835.29.20	Of triammonium.....	1.5%	Free (A*,E,IL,J, MX)		8.5%"
			0.3% (CA)		

Conforming change: General note 4(d) to the tariff schedule is modified by deleting "2835.21.00 India" and by inserting in numerical sequence "2835.29.20 India".

70(a). Subheading 2836.93.00 is deleted.

(b). The following new subheading 2836.99.20 is inserted in numerical order:

	[Carbonates;...:]				
	[Other:]				
	[Other:]				
"2836.99.20	Bismuth carbonate.....	6.4%	Free (A*,CA,E, IL,J,MX)		35%"

Conforming change: General note 4(d) to the tariff schedule is modified by deleting "2836.93.00 India" and by inserting in numerical sequence "2836.99.20 India".

71. Subheading 2841.60.00 is superseded by the following:

	[Salts...:]				
	"Manganites, manganates and permanganates:				
2841.61.00	Potassium permanganate.....	5%	Free (A*,CA,E,IL, J,MX)		23%
2841.69.00	Other.....	5%	Free (A*,CA,E,IL, J,MX)		23%"

Conforming change: General note 4(d) to the tariff schedule is modified by deleting "2841.60.00 India" and by inserting in numerical sequence "2841.61.00 India" and "2841.69.00 India".

72. Heading 2848 and subheadings 2848.10.00 and 2848.90.00 are superseded by the following:

"2848.00	Phosphides, whether or not chemically defined, excluding ferrophosphorus:				
2848.00.10	Of copper (phosphor copper), containing more than 15 percent by weight of phosphorus.....	2.6%	Free (A*,CA,E, IL,J,MX)		32.5%
2848.00.90	Of other metals or of nonmetals.....	Free			25%"

Conforming change: General note 4(d) to the tariff schedule is modified by deleting "2848.10.00 India" and by inserting in numerical sequence "2848.00.10 India".

73. Subdivision (f) of note 1 to chapter 29 is modified by inserting the expression "(including an anticaking agent)" after the word "stabilizer".

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74(a). Subdivision (a) of note 2 to chapter 29 is modified to read as follows:

"(a) Goods of heading 1504 or crude glycerol of heading 1520;"

(b). Subparagraph (ij) of note 2 to chapter 29 is modified by deleting the expression "heading 3823" and inserting the expression "heading 3824" in lieu thereof.

75. Subdivision (b) of note 5 to chapter 29 is modified by deleting the expression "or glycerol", and subdivision (d) of such note 5 is modified by deleting the expression "and glycerol".

76. Subheadings 2903.40, 2903.40.10 and 2903.40.40 are superseded by the following:

	[Halogenated...:]			
	"Halogenated derivatives of acyclic hydrocarbons containing two or more different halogens:			
2903.41.00	Trichlorofluoromethane.....	3.7%	Free (A*,CA,E,IL, J,MX)	25%
2903.42.00	Dichlorodifluoromethane.....	3.7%	Free (A*,CA,E,IL, J,MX)	25%
2903.43.00	Trichlorotrifluoroethanes.....	3.7%	Free (A*,CA,E,IL, J,MX)	25%
2903.44.00	Dichlorotetrafluoroethanes and chloropentafluoroethane.....	3.7%	Free (A*,CA,E,IL, J,K,MX)	25%
2903.45.00	Other derivatives perhalogenated only with fluorine and chlorine.....	3.7%	Free (A*,CA,E,IL, J,K,MX)	25%
2903.46.00	Bromochlorodifluoromethane, bromotrifluoromethane and dibromotetrafluoroethanes.....	3.7%	Free (A*,CA,E,IL, J,K,MX)	25%
2903.47.00	Other perhalogenated derivatives.....	3.7%	Free (A*,CA,E,IL, J,MX)	25%
2903.49	Other:			
2903.49.10	Bromochloromethane.....	Free		25%
2903.49.90	Other.....	3.7%	Free (A*,CA,E,IL, J,K,MX)	25%"

Conforming changes: General note 4(d) is modified by deleting "2903.40.40 India" and by inserting in lieu thereof the following: "2903.41.00 India", "2903.42.00 India", "2903.43.00 India", "2903.44.00 India", "2903.45.00 India", "2903.46.00 India", "2903.47.00 India", and "2903.49.90 India".

77(a). Subheading 2905.21.00 is deleted.

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77. (con.)
(b). Subheading 2905.29.00 is superseded by the following:

	[Acyclic...:]				
	[Unsaturated...:]				
"2905.29	Other:				
2905.29.10	Allyl alcohol.....	6.7%	Free (A*,CA,E, IL,J,MX)	45%	
2905.29.90	Other.....	3.7%	Free (A*,CA,E, IL,J,K,MX)	25%"	

Conforming changes: General note 4(d) is modified by deleting "2905.21.00 India" and "2905.29.00 India" and by inserting in numerical sequence "2905.29.10 India" and "2905.29.90 India".

78. The following new subheading is inserted in numerical order:

	[Acyclic...:]				
	[Other...:]				
"2905.45.00	Glycerol.....	0.5¢/kg	Free (A*,CA,E, IL,J,MX)	4.4¢/kg"	

Conforming change: General note 4(d) is modified by inserting in numerical sequence "2905.45.00 India".

79. Subheadings 2914.30, 2914.30.10, and 2914.30.50 are superseded by the following:

	[Ketones...:]				
	"Aromatic ketones without other oxygen function:				
2914.31.00	Phenylacetone (Phenylpropan-2-one).....	10.6%	Free (A*,CA,E, IL,J,MX)	15.4¢/kg + 58%	
2914.39	Other:				
2914.39.10	7-Acetyl-1,1,3,4,4,6-hexamethyl-tetrahydronaphthalene; 1-(2-Naphthalenyl)ethanone; and 6-Acetyl-1,1,2,3,3,5-hexamethyl-indan.....	Free		15.4¢/kg + 58%	
2914.39.90	Other.....	10.6%	Free (A*,CA,E,IL, J,K,MX)	15.4¢/kg + 58%"	

Conforming changes: General note 4(d) is modified by deleting "2914.30.50 India" and by inserting in numerical sequence "2914.31.00 India" and "2914.39.90 India".

80. Subheading 2914.41.00 (and the superior text thereto) and subheadings 2914.49 through 2914.49.90 are superseded by the following:

	[Ketones...:]				
"2914.40	Ketone-alcohols and ketone-aldehydes:				
2914.40.10	4-Hydroxy-4-methylpentan-2-one (Diacetone alcohol).....	4%	Free (A*,CA,E, IL,J,MX)	25%	

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80. (con.):

	[Ketones...:] [con.]			
2914.40 (con.)	Ketone-alcohols and ketone-aldehydes (con.):			
	Other:			
	Aromatic:			
2914.40.20	1,2,3-Indantrione monohydrate (Ninhydrin).....	9.9%	Free (A*,CA,E, IL,J) 7.7% (MX)	15.4¢/kg + 42%
2914.40.40	Other.....	9.9%	Free (CA,E,IL,J, K) 7.7% (MX)	15.4¢/kg + 42%
	Other:			
2914.40.60	1,3-Dihydroxyacetone.....	Free		20%
2914.40.90	Other.....	4.8%	Free (A*,CA,E,IL, J,K,MX)	20%"

Conforming change: General note 4(d) is modified by deleting "2914.41.00 India", "2914.49.20 India", and "2914.49.90 India" and by inserting in numerical sequence "2914.40.10 India", "2914.40.20 India", and "2914.40.90 India".

81. Subheadings 2916.33 through 2916.33.50 are superseded by the following:

	[Unsaturated...:]			
	[Aromatic...:]			
"2916.34	Phenylacetic acid and its salts:			
2916.34.10	Phenylacetic acid (α-Toluic acid).....	6.6%	Free (CA,E,IL, J,MX)	15.4¢/kg + 40.5%
	Other:			
2916.34.15	Odoriferous or flavoring compounds.....	10.8%	Free (A*,CA,E, IL,J,MX)	15.4¢/kg + 58%
	Other:			
2916.34.25	Products described in additional U.S. note 3 to section VI.....	12.1%	Free (CA,E,IL, J,MX)	15.4¢/kg + 57%
2916.34.55	Other.....	3¢/kg + 14.3%	Free (CA,E,IL, J,MX)	15.4¢/kg + 57%
2916.35	Esters of phenylacetic acid:			
2916.35.15	Odoriferous or flavoring compounds.....	10.8%	Free (A*,CA,E, IL,J,MX)	15.4¢/kg + 58%
	Other:			
2916.35.25	Products described in additional U.S. note 3 to section VI.....	12.1%	Free (CA,E,IL, J,MX)	15.4¢/kg + 57%
2916.35.55	Other.....	3¢/kg + 14.3%	Free (CA,E,IL, J,MX)	15.4¢/kg + 57%"

Conforming change: General note 4(d) is modified by deleting "2916.33.20 India" and by inserting in numerical sequence "2916.34.15 India" and "2916.35.15 India".

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82. The following new subheadings 2922.43, 2922.43.10 and 2922.43.50 are inserted in numerical order:

	[Oxygen-function...:]			
	[Amino-acids...:]			
"2922.43	Anthranilic acid and its salts:			
2922.43.10	Products described in additional U.S. note 3 to section VI.....	12.1%	Free (CA,E,IL, J,K,MX)	15.4¢/kg + 50%
2922.43.50	Other.....	3¢/kg + 13.8%	Free (CA,E,IL, J,K,MX)	15.4¢/kg + 50%"

83. The article description of subheading 2922.49.10 is modified by inserting the following chemical name in alphabetical order:

"ß-(ß-Methoxyethoxyethyl)-4-aminobenzoate;"

84. The article description of subheading 2922.50.10 is modified by deleting the chemical name, "ß-(ß-Methoxyethoxyethyl)-4-aminobenzoate;".

85. The article description of subheading 2922.50.13 is modified by deleting the chemical name, "Propranolol hydrochloride;".

86. The following new subheading 2924.22.00 is inserted in numerical order:

	[Carboxyamide-function...:]			
	[Cyclic...:]			
"2924.22.00	2-Acetamidobenzoic acid.....	3¢/kg + 15.8%	Free (CA,E,IL, J) 2.5¢/kg + 12.6% (MX)	15.4¢/kg + 58%"

87. Subheadings 2932.90 through 2932.90.90 are superseded by the following:

	[Heterocyclic...:]			
	"Other:			
2932.91.00	Isosafrole.....	12.1%	Free (CA,E,IL, J,MX)	15.4¢/kg + 52%
2932.92.00	1-(1,3-Benzodioxol-5-yl)propan-2-one.....	12.1%	Free (CA,E,IL, J,MX)	15.4¢/kg + 52%
2932.93.00	Piperonal (heliotropin).....	4.8%	Free (CA,E,IL, J,MX)	45%
2932.94.00	Safrole.....	6.9%	Free (A*,CA,E, IL,J,MX)	45%
2932.99	Other:			
	Aromatic:			
	Pesticides:			
2932.99.04	2,2-Dimethyl-1,3-benzodioxol-4-yl methylcarbamate (Bendiocarb).....	Free		15.4¢/kg + 40.5%
2932.99.08	2-Ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranylmethanesulfonate...	6.7%	Free (A*,CA,E, IL,J,MX)	15.4¢/kg + 40.5%
2932.99.20	Other.....	10.2%	Free (A*,CA,E, IL,J,MX)	15.4¢/kg + 40%

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87. (con.):

	[Heterocyclic...:] [con.]			
	Other (con.):			
	Other (con.):			
	Aromatic (con.):			
2932.99.32	Benzofuran (Coumarone); and Dibenzofuran (Diphenylene oxide).....	Free		Free
2932.99.35	2-Hydroxy-3-dibenzofuran-carboxylic acid.....	7.3%	Free (CA,E,IL, J,MX)	15.4¢/kg + 66.5%
2932.99.39	Benzointetrahydropyranyl ester; and Xanthen-9-one.....	5.8%	Free (CA,E,IL, J,MX)	15.4¢/kg + 39.5%
2932.99.55	Bis-O-[(4-methylphenyl)-methylene]-D-glucitol (Dimethylbenzylidene sorbitol); and Rhodamine 2C base.....	Free		15.4¢/kg + 52%
	Other:			
2932.99.60	Products described in additional U.S. note 3 to section VI.....	12.1%	Free (CA,E,IL, J,K,MX)	15.4¢/kg + 52%
2932.99.70	Other.....	3¢/kg + 14.3%	Free (CA,E,IL, J,K,L,MX)	15.4¢/kg + 52%
	Other:			
2932.99.80	Paraldehyde, USP grade.....	Free		25%
2932.99.90	Other.....	3.7%	Free (A*,CA,E, IL,J,K,MX)	25%"

Conforming changes: General note 4(d) is modified by deleting "2932.90.08 India", "2932.90.20 India", "2932.90.37 India", and "2932.90.90 India" and by inserting in numerical sequence "2932.94.00 India", "2932.99.08 India", "2932.99.20 India", and "2932.99.90 India".

88(a). The article description of heading 2933 is modified to read as follows:

"Heterocyclic compounds with nitrogen hetero-atom(s) only:"

(b). The following new subheadings 2933.32 through 2933.32.50 are inserted in numerical order:

	[Heterocyclic...:]			
	[Compounds...:]			
"2933.32	Piperidine and its salts:			
2933.32.10	Piperidine.....	3¢/kg + 14.3%	Free (CA,E,IL,J) 1.4¢/kg + 6.4% (MX)	15.4¢/kg + 52%
2933.32.50	Other.....	12.1%	Free (CA,E,IL,J) 5.4% (MX)	15.4¢/kg + 52%"

Conforming change: Subheadings 2933.39.60 and 2933.39.90 are redesignated as 2933.39.61 and 2933.39.91, respectively.

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88. (con.)

(c). The superior text immediately preceding subheading 2933.51 and appearing at the same level of indentation as the article description of subheading 2933.40 is modified to read as follows:

"Compounds containing a pyrimidine ring (whether or not hydrogenated) or piperazine ring in the structure:"

89(a). The article description of heading 2934 is modified to read as follows:

"Nucleic acids and their salts; other heterocyclic compounds:"

(b). The following new subheading 9906.29.40 is inserted in numerical sequence in subchapter VI of chapter 99:

	[Goods of Mexico,...:]	
"9906.29.40	Nucleic acids and their salts (provided for in subheading 2934.90.39).....	5.4% (MX)"

90. Subheading 2939.40.00 is superseded by the following:

	[Vegetable...:]		
	"Ephedrines and their salts:		
2939.41.00	Ephedrine and its salts.....	Free	15.4¢/kg + 59%
2939.42.00	Pseudoephedrine and its salts.....	Free	15.4¢/kg + 59%
2939.49.00	Other.....	Free	15.4¢/kg + 59%"

91. Subheading 2939.60.00 is superseded by the following:

	[Vegetable...:]		
	"Alkaloids of rye ergot and their derivatives; salts thereof:		
2939.61.00	Ergometrine and its salts.....	Free	25%
2939.62.00	Ergotamine and its salts.....	Free	25%
2939.63.00	Lysergic acid and its salts.....	Free	25%
2939.69.00	Other.....	Free	25%"

92(a). Notes 2 and 3 to chapter 30 are redesignated as notes 3 and 4, respectively, and the following new note 2 is inserted:

"2. For the purposes of heading 3002, the expression "modified immunological products" applies only to monoclonal antibodies (MABs), antibody fragments, antibody conjugates and antibody fragment conjugates."

(b). Note 3 to chapter 30 (as redesignated above) is modified by deleting the expression "note 3(d)" and inserting the expression "note 4(d)" in lieu thereof.

93(a). The article description of heading 3002 is modified by deleting the expression "blood fractions;" and inserting the following expression in lieu thereof: "blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes;".

93. (con.)

(b). The article description of subheading 3002.10.00 is modified by adding at the end thereof the expression "and modified immunological products, whether or not obtained by means of biotechnological processes".

(c). Subheadings 3002.31.00, the superior text thereto reading "Vaccines for veterinary medicine:", and 3002.39.00 are superseded by the following:

	[Human...:]			
"3002.30.00	Vaccines for veterinary medicine.....	Free		Free"

94. The article description of heading 3006 is modified to read as follows:

"Pharmaceutical goods specified in note 4 to this chapter:"

95. Subdivision (c) of note 1 to chapter 31 is modified by deleting the expression "heading 3823" and inserting the expression "heading 3824" in lieu thereof.

96(a). Subheading 3201.30.00 is deleted.

(b). Subheading 3201.90.20 is redesignated as 3201.90.25, and the article description of such subheading 3201.90.25 is superseded by the following:

"Extracts of canaigre, chestnut, curupay, divi-divi, eucalyptus, gambier, hemlock, larch, mangrove, myrobalan, oak, sumac, tara, urunday or valonia"

97. Subheading 3206.10.00 is superseded by the following:

	[Other...:]			
	"Pigments and preparations based on titanium dioxide:			
3206.11.00	Containing 80 percent or more by weight of titanium dioxide calculated on the dry weight.....	6%	Free (A*,CA,E, IL,J,MX)	30%
3206.19.00	Other.....	6%	Free (A*,CA,E, IL,J,MX)	30%"

Conforming change: General note 4(d) is modified by deleting "3206.10.00 India" and by inserting in lieu thereof "3206.11.00 India" and "3206.19.00 India".

98. The article description of subheading 3214.10.00 is modified to read as follows:

"Glaziers' putty, grafting putty, resin cements, caulking compounds and other mastics; painters' fillings".

99. Subparagraph (a) of note 1 to chapter 33 is superseded by the following:

"(a) Natural oleoresins or vegetable extracts of heading 1301 or 1302;"

100. Notes 2 and 3 to chapter 33 are redesignated as notes 3 and 4, respectively, and the following new note 2 is inserted:

"2. The expression "odoriferous substances" in heading 3302 refers only to the substances of heading 3301, to odoriferous constituents isolated from those substances or to synthetic aromatics."

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101. The article description of heading 3301 is modified by inserting the expression "extracted oleoresins;" after the expression "resinoids;".

102(a). The article description of heading 3302 is modified to read as follows:

"Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages:".

(b). Subheading 3302.10.30 is superseded by the following:

	[Mixtures...:]				
	[Of...:]				
	[Containing...:]				
	"Containing over 20 percent of alcohol by weight:				
	Preparations requiring only the addition of ethyl alcohol or water to produce a beverage suitable for human consumption:				
3302.10.40	Containing over 20 percent but not over 50 percent of alcohol by weight.....	11.6¢/kg + 2.6%	Free (A*,CA,E, IL,J,MX)	88¢/kg + 25%	
3302.10.50	Containing over 50 percent of alcohol by weight.....	23.3¢/kg + 2.6%	Free (A*,CA,E, IL,J,MX)	$1.76/kg + 25%	
3302.10.90	Other.....	3.8%	Free (CA,E,IL, J,MX)	50%"	

Conforming change: General note 4(d) is modified by inserting in numerical sequence "3302.10.40 India" and "3302.10.50 India".

103. Subheading 3304.99.00 is superseded by the following:

	[Beauty...:]				
	[Other:]				
"3304.99	Other:				
3304.99.10	Petroleum jelly put up for retail sale.....	Free		75%	
3304.99.50	Other.....	2.9%	Free (A*,E,IL, J,MX) 0.9% (CA)	75%"	

Conforming change: General note 4(d) is modified by deleting "3304.99.00 India" and by inserting in lieu thereof "3304.99.50 India".

104(a). The article description of heading 3306 is modified to read as follows:

"Preparations for oral or dental hygiene, including denture fixative pastes and powders; yarn used to clean between the teeth (dental floss), in individual retail packages:".

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104. (con.)

(b). The following new subheading 3306.20.00 is inserted in numerical order:

	[Preparations...:]			
"3306.20.00	Yarn used to clean between the teeth (dental floss).....	3.3%	Free (A*,E,IL, J,MX) 1.1% (CA)	88¢/kg + 75%"

Conforming change: General note 4(d) to the HTS is modified by inserting in numerical sequence "3306.20.00 India".

105. Subdivision (a) of note 5 to chapter 34 is modified by deleting the expression "heading 1516, 1519 or 3402" and inserting the expression "1516, 3402 or 3823" in lieu thereof.

106. Subheadings 3502.10 through 3502.90.00 are superseded by the following:

	[Albumins,...:]			
	"Egg albumin:			
3502.11.00	Dried.....	55.5¢/kg	Free (E,IL,J,MX) 11.9¢/kg (CA)	59.5¢/kg
3502.19.00	Other.....	11.3¢/kg	Free (E,IL,J,MX) 2.4¢/kg (CA)	24.3¢/kg
3502.20.00	Milk albumin, including concentrates of two or more whey proteins.....	Free		Free
3502.90.00	Other.....	Free		Free"

107. Note 1 to chapter 37 is modified by deleting the word "materials".

108. Note 2 to chapter 37 is modified to read as follows:

"2. In this chapter the word "photographic" relates to the process by which visible images are formed, directly or indirectly, by the action of light or other forms of radiation on photosensitive surfaces."

109(a). The superior text immediately preceding subheading 3702.31.00 and after subheading 3702.20.00 is modified by deleting the expression "without sprocket holes," and inserting the expression "without perforations," in lieu thereof.

(b). The superior text immediately preceding subheading 3702.41.00 and after subheading 3702.39.00 is modified by deleting the expression "without sprocket holes," and inserting the expression "without perforations," in lieu thereof.

110. The following new subdivision (d) of note 1 to chapter 38 is inserted:

"(d) Spent catalysts of a kind used for the extraction of base metals or for the manufacture of chemical compounds of base metals (heading 2620), spent catalysts of a kind used principally for the recovery of precious metal (heading 7112) or catalysts consisting of metals or metal alloys in the form of, for example, finely divided powder or woven gauze (section XIV or XV)."

111. Note 2 to chapter 38 is modified by deleting the expression "Heading 3823" and inserting the expression "Heading 3824" in lieu thereof.

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112. The article description of subheading 3806.20.00 is modified to read as follows:

"Salts of rosin, of resin acids or of derivatives of rosin or resin acids, other than salts of rosin adducts"

113(a). The article description of heading 3822.00 is modified to read as follows:

"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:"

(b). The following new subheading is inserted in numerical sequence in subchapter VI of chapter 99:

	[Goods of Mexico,...:]	
"9906.38.22	Diagnostic or laboratory reagents on a backing of paper (provided for in subheading 3822.00.50).....	Free (MX)"

114. The following heading and subheadings are redesignated as follows:

Present number	New number
3823	3824
3823.10.00	3824.10.00
3823.20.00	3824.20.00
3823.30.00	3824.30.00
3823.40	3824.40
3823.40.10	3824.40.10
3823.40.20	3824.40.20
3823.40.50	3824.40.50
3823.50.00	3824.50.00
3823.60.00	3824.60.00
3823.90	3824.90
3823.90.11	3824.90.11
3823.90.19	3824.90.19
3823.90.21	3824.90.21
3823.90.22	3824.90.22
3823.90.25	3824.90.25
3823.90.26	3824.90.26
3823.90.28	3824.90.28
3823.90.31	3824.90.31
3823.90.32	3824.90.32
3823.90.33	3824.90.33
3823.90.34	3824.90.34
3823.90.35	3824.90.35
3823.90.36	3824.90.36
3823.90.39	3824.90.39
3823.90.40	3824.90.40
3823.90.45	3824.90.45
3823.90.46	3824.90.46
3823.90.47	3824.90.47
3823.90.70	3824.90.70
3823.90.90	3824.90.90

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114. (con.)

Conforming changes: General note 4(d) to the HTS is modified by deleting the subheadings and countries set forth in the column labelled "Present provision" and by inserting in numerical sequence the subheadings and countries set forth in the column labelled "New provision":

Present provision		New provision	
3823.20.00	India	3824.20.00	India
3823.30.00	India	3824.30.00	India
3823.60.00	India	3824.60.00	India
3823.90.19	India	3824.90.19	India
3823.90.22	India	3824.90.22	India
3823.90.25	India	3824.90.25	India
3823.90.31	India	3824.90.31	India
3823.90.32	India	3824.90.32	India
3823.90.33	India	3824.90.33	India
3823.90.34	India	3824.90.34	India
3823.90.36	India	3824.90.36	India
3823.90.40	Brazil; India; Malaysia	3824.90.40	Brazil; India; Malaysia
3823.90.46	India	3824.90.46	India

115. The following new heading 3823 and its subheadings are inserted in numerical order:

"3823	Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols:			
	Industrial monocarboxylic fatty acids; acid oils from refining:			
3823.11.00	Stearic acid	2.9¢/kg + 5.3%	Free (A*,E,IL, J,MX) 0.6¢/kg + 1.2% (CA)	6.6¢/kg + 25%
3823.12.00	Oleic acid	2.9¢/kg + 4.4%	Free (A*,E,IL, J,MX) 0.6¢/kg + 1% (CA)	6.6¢/kg + 20%
3823.13.00	Tall oil fatty acids	4.4%	Free (CA,E,IL,J, MX)	20%
3823.19	Other:			
3823.19.20	Derived from coconut, palm-kernel or palm oil	4.1%	Free (A*,E,IL,J, MX) 1% (CA)	20%
3823.19.40	Other	4.4%	Free (E,IL,J,MX) 1% (CA)	20%
3823.70	Industrial fatty alcohols: Derived from fatty substances of animal or vegetable origin:			
3823.70.20	Oleyl alcohol	7%	Free (E,IL,J,MX) 1.5% (CA)	39.5%
3823.70.40	Other	4%	Free (E,IL,J,MX) 1% (CA)	25%
3823.70.60	Other	3.3%	Free (E,IL,J,MX) 0.7% (CA)	25%"

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115. (con.)

Conforming change: General note 4(d) is modified by inserting in numerical sequence "3823.19.20 India".

116. The following new subheadings 3824.71.00 and 3824.79.00 are inserted in numerical order:

	[Prepared...:] "Mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens:			
3824.71.00	Containing acyclic hydrocarbons perhalogenated only with fluorine and chlorine.....	3.7%	Free (CA,E,IL, J,MX)	25%
3824.79.00	Other.....	3.7%	Free (CA,E,IL, J,MX)	25%"

117(a). Subdivision (d) of note 2 to chapter 39 is modified to read as follows:

"(d) Solutions (other than collodions) consisting of any of the products specified in headings 3901 to 3913 in volatile organic solvents when the weight of the solvent exceeds 50 percent of the weight of the solution (heading 3208); stamping foils of heading 3212;"

(b). Subdivisions (g) through (v) of note 2 to chapter 39 are redesignated as (h) through (w), respectively, and the following new subdivision (g) is inserted:

"(g) Diagnostic or laboratory reagents on a backing of plastics (heading 3822);"

118. Note 4 to chapter 39 is modified to read as follows:

"4. The expression "copolymers" covers all polymers in which no single monomer unit contributes 95 percent or more by weight to the total polymer content.

For the purposes of this chapter, except where the context otherwise requires, copolymers (including co-polycondensates, co-polyaddition products, block copolymers and graft copolymers) and polymer blends are to be classified in the heading covering polymers of that comonomer unit which predominates by weight over every other single comonomer unit. For the purposes of this note, constituent comonomer units of polymers falling in the same heading shall be taken together.

If no single comonomer unit predominates, copolymers or polymer blends, as the case may be, are to be classified in the heading which occurs last in numerical order among those which equally merit consideration."

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119. Subheading note 1 to chapter 39 is modified to read as follows:

"1. Within any one heading of this chapter, polymers (including copolymers) and chemically modified polymers are to be classified according to the following provisions:

(a) Where there is a subheading named "Other" in the same series:

(1) The designation in a subheading of a polymer by the prefix "poly" (e.g., polyethylene and polyamide-6,6) means that the constituent monomer unit or monomer units of the named polymer taken together must contribute 95 percent or more by weight of the total polymer content.

(2) The copolymers named in subheadings 3901.30, 3903.20, 3903.30 and 3904.30 are to be classified in those subheadings, provided that the comonomer units of the named copolymers contribute 95 percent or more by weight of the total polymer content.

(3) Chemically modified polymers are to be classified in the subheading named "Other", provided that the chemically modified polymers are not more specifically covered by another subheading.

(4) Polymers not meeting (1), (2) or (3), above, are to be classified in the subheading, among the remaining subheadings in the series, covering polymers of that monomer unit which predominates by weight over every other single comonomer unit. For this purpose, constituent monomer units of polymers falling in the same subheading shall be taken together. Only the constituent comonomer units of the polymers in the series of subheadings under consideration are to be compared.

(b) Where there is no subheading named "Other" in the same series:

(1) Polymers are to be classified in the subheading covering polymers of that monomer unit which predominates by weight over every other single comonomer unit. For this purpose, constituent monomer units of polymers falling in the same subheading shall be taken together. Only the constituent comonomer units of the polymers in the series under consideration are to be compared.

(2) Chemically modified polymers are to be classified in the subheading appropriate to the unmodified polymer.

Polymer blends are to be classified in the same subheading as polymers of the same monomer units in the same proportions."

120. Subheading 3901.90.50 is superseded by the following:

	[Polymers...:]				
	[Other:]				
	"Other:				
3901.90.55	Ethylene copolymers.....	11.3%	Free (A,CA,E, IL,J,MX)	43%	
3901.90.90	Other.....	1.3¢/kg + 7.2%	Free (A,CA,E,IL, J,K,MX)	2.2¢/kg + 33.5%"	

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121. Subheadings 3905.11.00 through 3905.90.80 are superseded by the following:

	[Polymers...:]			
	"Polyvinyl acetate:			
3905.12.00	In aqueous dispersion.....	4%	Free (A,CA,E,IL, J,MX)	37.5%
3905.19.00	Other.....	4%	Free (A,CA,E,IL, J,MX)	37.5%
	Vinyl acetate copolymers:			
3905.21.00	In aqueous dispersion.....	4%	Free (A,CA,E,IL, J,MX)	37.5%
3905.29.00	Other.....	4%	Free (A,CA,E,IL, J,MX)	37.5%
3905.30.00	Polyvinyl alcohol, whether or not containing unhydrolyzed acetate groups.....	3.2%	Free (A,CA,E,IL, J,MX)	37.5%
	Other:			
3905.91	Copolymers:			
3905.91.10	Containing by weight 50 percent or more of derivatives of vinyl acetate.....	4%	Free (A,CA,E,IL, J,K,MX)	37.5%
3905.91.50	Other.....	5.3%	Free (A,CA,E,IL, J,K,MX)	43.5%
3905.99	Other:			
3905.99.30	Polyvinyl carbazole (including adjuvants).....	Free		43.5%
3905.99.80	Other.....	5.3%	Free (A,CA,E,IL, J,K,MX)	43.5%"

122. Subheadings 4010.10 through 4010.99.50 are superseded by the following:

	[Conveyor...:]			
	"Conveyor belts or belting:			
4010.11.00	Reinforced only with metal.....	3.8%	Free (A,E,IL,J, MX) 0.8% (CA)	25%
4010.12	Reinforced only with textile materials:			
4010.12.10	With textile components in which vegetable fibers predominate by weight over any other single textile fiber.....	4.7%	Free (A,E,IL,J, MX) 1% (CA)	30%
	With textile components in which man-made fibers predominate by weight over any other single textile fiber:			
4010.12.50	Of a width exceeding 20 cm.....	8%	Free (A,E,IL,J, MX) 1.6% (CA)	74%
4010.12.55	Other.....	7.4%	Free (A,E,IL,J) MX) 1.6% (CA)	74%
4010.12.90	Other.....	2.2%	Free (E,IL,J) 0.4% (CA) 1.6% (MX)	25%

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122. (con.):

	[Conveyor...:]			
	Conveyor belts or belting (con.):			
4010.13.00	Reinforced only with plastics.....	3.8%	Free (A,E,IL,J, MX) 0.8% (CA)	25%
4010.19	Other:			
	Combined with textile materials:			
4010.19.10	With textile components in which vegetable fibers predominate by weight over any other single textile fiber.....	4.7%	Free (A,E,IL,J, MX) 1% (CA)	30%
	With textile components in which man-made fibers predominate by weight over any other single textile fiber:			
4010.19.50	Of a width exceeding 20 cm.....	8%	Free (A,E,IL,J, MX) 1.6% (CA)	74%
4010.19.55	Other.....	7.4%	Free (A,E,IL,J, MX) 1.6% (CA)	74%
4010.19.80	Other.....	2.2%	Free (E,IL,J) 0.4% (CA) 1.6% (MX)	25%
4010.19.90	Other.....	3.8%	Free (A,E,IL,J, MX) 0.8% (CA)	25%
	Transmission belts or belting:			
4010.21	Endless transmission belts of trapezoidal cross section (V-belts), whether or not grooved, of a circumference exceeding 60 cm but not exceeding 180 cm:			
4010.21.30	Combined with textile materials.....	4.4%	Free (B,E,IL,J, MX) 1% (CA)	30%
4010.21.60	Other.....	3.6%	Free (A,E,IL,J, MX) 0.8% (CA)	25%
4010.22	Endless transmission belts of trapezoidal cross section (V-belts), whether or not grooved, of a circumference exceeding 180 cm but not exceeding 240 cm:			
4010.22.30	Combined with textile materials.....	4.4%	Free (B,E,IL,J, MX) 1% (CA)	30%
4010.22.60	Other.....	3.6%	Free (A,E,IL,J, MX) 0.8% (CA)	25%

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122. (con.):

	[Conveyor...:]			
	Transmission belts or belting (con.):			
4010.23	Endless synchronous belts of a circumference exceeding 60 cm but not exceeding 150 cm:			
	Combined with textile materials:			
4010.23.30	With textile components in which vegetable fibers predominate by weight over any other single textile fiber.....	4.7%	Free (A,E,IL,J, MX) 1% (CA)	30%
	With textile components in which man-made fibers predominate by weight over any other single textile fiber:			
4010.23.41	Of a width exceeding 20 cm.....	8%	Free (A,E,IL,J, MX) 1.6% (CA)	74%
4010.23.45	Other.....	7.4%	Free (A,E,IL,J, MX) 1.6% (CA)	74%
4010.23.50	Other.....	2.2%	Free (E,IL,J) 0.4% (CA) 1.6% (MX)	25%
4010.23.90	Other.....	3.8%	Free (A,E,IL,J, MX) 0.8% (CA)	25%
4010.24	Endless synchronous belts of a circumference exceeding 150 cm but not exceeding 198 cm:			
	Combined with textile materials:			
4010.24.30	With textile components in which vegetable fibers predominate by weight over any other single textile fiber.....	4.7%	Free (A,E,IL,J, MX) 1% (CA)	30%
	With textile components in which man-made fibers predominate by weight over any other single textile fiber:			
4010.24.41	Of a width exceeding 20 cm.....	8%	Free (A,E,IL,J, MX) 1.6% (CA)	74%
4010.24.45	Other.....	7.4%	Free (A,E,IL,J, MX) 1.6% (CA)	74%
4010.24.50	Other.....	2.2%	Free (E,IL,J) 0.4% (CA) 1.6% (MX)	25%
4010.24.90	Other.....	3.8%	Free (A,E,IL,J, MX) 0.8% (CA)	25%

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122. (con.):

	[Conveyor...:] Transmission belts or belting (con.):			
4010.29	Other:			
	Of trapezoidal cross section (V-belts and V-belting):			
4010.29.10	Combined with textile materials.....	4.4%	Free (B,E,IL,J, MX) 1% (CA)	30%
4010.29.20	Other.....	3.6%	Free (A,E,IL,J, MX) 0.8% (CA)	25%
	Other:			
	Combined with textile materials:			
4010.29.30	With textile components in which vegetable fibers predominate by weight over any other single textile fiber.....	4.7%	Free (A,E,IL,J, MX) 1% (CA)	30%
	With textile components in which man-made fibers predominate by weight over any other single textile fiber:			
4010.29.41	Of a width exceeding 20 cm.....	8%	Free (A,E,IL,J, MX) 1.6% (CA)	74%
4010.29.45	Other.....	7.4%	Free (A,E,IL,J, MX) 1.6% (CA)	74%
4010.29.50	Other.....	2.2%	Free (E,IL,J) 0.4% (CA) 1.6% (MX)	25%
4010.29.90	Other.....	3.8%	Free (A,E,IL,J, MX) 0.8% (CA)	25%"

123. The article description of subheading 4104.31 is modified by deleting the expression "grain splits:" and inserting the expression "full grain splits:" in lieu thereof.

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124. Note 2 to chapter 42 is deleted and the following new note 2 inserted in lieu thereof:

"2. (A) In addition to the provisions of note 1, above, heading 4202 does not cover:

(a) Bags made of sheeting of plastics, whether or not printed, with handles, not designed for prolonged use (heading 3923);

(b) Articles of plaiting materials (heading 4602).

(B) Articles of headings 4202 and 4203 which have parts of precious metal or metal clad with precious metal, of natural or cultured pearls, of precious or semiprecious stones (natural, synthetic or reconstructed) remain classified in those headings even if such parts constitute more than minor fittings or minor ornamentation, provided that these parts do not give the articles their essential character. If, on the other hand, the parts give the articles their essential character, the articles are to be classified in chapter 71."

125. Note 1 to chapter 43 is modified by inserting the expression "or wool" after the expression "hair".

126. Subdivision (b) of note 2 to chapter 43 is modified by inserting the expression "or wool" after the expression "hair".

127. Subdivision (b) of note 1 to chapter 44 is superseded by the following:

"(b) Bamboo or other materials of a woody nature of a kind used primarily for plaiting, in the rough, whether or not split, sawn lengthwise or cut to length (heading 1401);"

128. Note 6 to chapter 44 is modified to read as follows:

"6. Subject to note 1 above and except where the context otherwise requires, any reference to "wood" in a heading of this chapter applies also to bamboo and other materials of a woody nature."

129. The following new subheading note 1 to chapter 44 is inserted after note 6 to chapter 44:

"Subheading Note

1. For the purposes of subheadings 4403.41 to 4403.49, 4407.24 to 4407.29, 4408.31 to 4408.39 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, 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 Marfim, Pulai, Punah, Ramin, Sapelli, Saqui-Saqui, Sepetir, Sipo, Sucupira, Suren, Teak, Tiama, Tola, Virola, White Lauan, White Meranti, White Seraya, Yellow Meranti."

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130. Subheadings 4403.31.00 (and the superior text thereto reading "Other, of the following tropical woods:") through 4403.35.00, inclusive, are superseded by the following:

	[Wood...:]			
	"Other, of tropical wood specified in subheading note 1 to this chapter:			
4403.41.00	Dark Red Meranti, Light Red Meranti and Meranti Bakau.....	Free		Free
4403.49.00	Other.....	Free		Free"

131. Subheadings 4407.21.00 (and the superior text thereto reading "Of the following tropical woods:"), 4407.22.00 and 4407.23.00 are superseded by the following:

	[Wood...:]			
	"Of tropical wood specified in subheading note 1 to this chapter:			
4407.24.00	Virola, Mahogany (Swietenia spp.), Imbuia and Balsa.....	Free		$1.27/m^3
4407.25.00	Dark Red Meranti, Light Red Meranti and Meranti Bakau.....	Free		$1.27/m^3
4407.26.00	White Lauan, White Meranti, White Seraya, Yellow Meranti and Alan.....	Free		$1.27/m^3
4407.29.00	Other.....	Free		$1.27/m^3"

132. Subheading 4408.20.00 is superseded by the following:

	[Veneer...:]			
	"Of tropical wood specified in subheading note 1 to this chapter:			
4408.31.00	Dark Red Meranti, Light Red Meranti and Meranti Bakau.....	Free		20%
4408.39.00	Other.....	Free		20%"

133. Subheading 4410.10.00 is superseded by the following:

	[Particle...:]			
	"Of wood:			
"4410.11.00	Waferboard, including oriented strand board.....	2.4%	Free (A,CA,E,IL, J,MX)	40%
4410.19.00	Other.....	2.4%	Free (A,CA,E,IL, J,MX)	40%"

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134. Subheadings 4412.11 through 4412.99.90 are superseded by the following:

	[Plywood,...:]			
	[Plywood...:]			
"4412.1[illegible]	With at least one outer ply of tropical wood specified in subheading note 1 to this chapter:			
	Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
4412.13.05	With a face ply of birch (Betula spp.).....	1.8%	Free (A*,CA,E, IL,J,MX)	50%
4412.13.25	With a face ply of Spanish cedar (Cedrela spp.) or walnut (Juglans spp.).....	8%	Free (A*,CA,E, IL,J,MX)	40%
4412.13.30	Other.....	8%	Free (A*,CA,E, IL,J,MX)	40%
'[illegible]12.13.55	Other.....	8%	Free (A*,CA,E, IL,J,MX)	40%
4412.14	Other, with at least one outer ply of nonconiferous wood:			
	Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
4412.14.05	With a face ply of birch (Betula spp.).....	1.8%	Free (A,CA,E, IL,J,MX)	50%
4412.14.25	With a face ply of Spanish cedar (Cedrela spp.) or walnut (Juglans spp.).....	6.8%	Free (A*,CA,E, IL,J,MX)	40%
4412.14.30	Other.....	8%	Free (A*,CA,E, IL,J,MX)	40%
4412.14.55	Other.....	8%	Free (A*,CA,E, IL,J,MX)	40%
4412.19	Other, with both outer plies of coniferous wood:			
	Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
4412.19.10	With a face ply of Parana pine (Araucaria angustifolia).....	3%	Free (A*,E,IL,J, MX) 1% (CA)	40%
4412.19.30	With a face ply of European red pine (Pinus silvestris)....	4.5%	Free (A*,E,IL,J, MX) 1% (CA)	40%
4412.19.40	Other.....	15.2%	Free (A*,E,IL,J, MX) 4% (CA)	40%

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134. (con.):

	[Plywood,...:] [con.]			
	[Plywood...:] [con.]			
4412.19 (con.)	Other, with both outer plies of coniferous wood (con.):			
4412.19.50	Other	6.8%	Free (E,IL,J) 1.6% (CA) 5.6% (MX)	40%
	Other, with at least one outer ply of nonconiferous wood:			
4412.22	With at least one ply of tropical wood specified in subheading note 1 to this chapter:			
4412.22.05	Containing at least one layer of particle board	2.4%	Free (A,CA,E, IL,J,MX)	40%
	Other:			
	Plywood:			
	Not surface covered, or clear surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
4412.22.10	With a face ply of birch (Betula spp.)	1.8%	Free (A,CA,E, IL,J,MX)	50%
4412.22.30	Other	8%	Free (A*,CA,E, IL,J,MX)	40%
4412.22.40	Other	8%	Free (A*,CA,E, IL,J,MX)	40%
4412.22.50	Other	2.4%	Free (A,CA,E, IL,J,MX)	40%
4412.23.00	Other, containing at least one layer of particle board	2.4%	Free (A,CA,E, IL,J,MX)	40%
4412.29	Other:			
	Plywood:			
	Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
4412.29.15	With a face ply of birch (Betula spp.)	1.8%	Free (A,CA,E, IL,J,MX)	50%
4412.29.35	Other	8%	Free (A*,CA,E, IL,J,MX)	40%
4412.29.45	Other	8%	Free (A*,CA,E, IL,J,MX)	40%
4412.29.55	Other	2.4%	Free (A,CA,E, IL,J,MX)	40%

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134. (con.):

	[Plywood,...:] [con.]			
	Other:			
4412.92	With at least one ply of tropical wood specified in subheading note 1 to this chapter:			
4412.92.05	Containing at least one layer of particle board.....	2.4%	Free (A,CA,E, IL,J,MX)	40%
	Other:			
	Plywood:			
	Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
4412.92.10	With a face ply of of Parana pine (Araucaria angustifolia).....	3%	Free (A*,E,IL,J, MX) 1% (CA)	40%
4412.92.30	With a face ply of European red pine (Pinus silvestris)...	4.5%	Free (A,E,IL,J, MX) 1% (CA)	40%
4412.92.40	Other.....	15.2%	Free (A*,E,IL,J, MX) 4% (CA)	40%
4412.92.50	Other.....	6.8%	Free (A,E,IL,J, MX) 1.6% (CA)	40%
4412.92.90	Other.....	2.4%	Free (A,E,IL,J, MX) 0.8% (CA)	40%
4412.93.00	Other, containing at least one layer of particle board.....	2.4%	Free (A,CA,E, IL,J,MX)	40%
4412.99	Other:			
	Plywood:			
	Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
4412.99.15	With a face ply of Parana pine (Araucaria angustifolia).....	3%	Free (A*,E,IL,J, MX) 1% (CA)	40%

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134. (con.):

	[Plywood,...:] [con.]			
	Other (con.):			
4412.99 (con.)	Other (con.):			
	Plywood (con.):			
	Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply (con.):			
4412.99.35	With a face ply of European red pine (Pinus silvestris).....	4.5%	Free (A,E,IL,J, MX) 1% (CA)	40%
4412.99.45	Other.....	15.2%	Free (A*,E,IL,J, MX) 4% (CA)	40%
4412.99.55	Other.....	6.8%	Free (A,E,IL,J, MX) 1.6% (CA)	40%
4412.99.95	Other.....	2.4%	Free (A,E,IL,J, MX) 0.8% (CA)	40%"

Conforming changes: General note 4(d) is modified by deleting the subheading and countries referenced in Column A below and by inserting in numerical sequence the subheadings and countries referenced in Column B below:

Column A		Column B	
4412.11.10	Indonesia	4412.13.05	Indonesia
4412.11.20	Indonesia	4412.13.25	Brazil; Indonesia
4412.11.50	Indonesia	4412.13.30	Brazil; Indonesia
4412.12.15	Brazil	4412.13.55	Brazil; Indonesia
4412.12.20	Brazil; Indonesia	4412.14.25	Brazil
4412.12.50	Brazil; Indonesia	4412.14.30	Brazil; Indonesia
4412.29.30	Brazil; Indonesia	4412.14.55	Brazil; Indonesia
4412.29.40	Brazil; Indonesia	4412.22.30	Brazil; Indonesia
4412.99.10	Brazil	4412.22.40	Brazil; Indonesia
4412.99.40	Indonesia	4412.29.35	Brazil; Indonesia
		4412.29.45	Brazil; Indonesia
		4412.92.10	Brazil
		4412.92.40	Indonesia
		4412.99.15	Brazil
		4412.99.45	Indonesia

135. The article description of heading 4415 is modified by deleting the expression "load boards, of wood:" and inserting the expression "load boards, of wood; pallet collars of wood:" in lieu thereof.

136. The article description of subheading 4415.20 is modified by deleting the expression "load boards:" and inserting the expression "load boards; pallet collars:" in lieu thereof.

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137. Note 1 to chapter 46 is modified by deleting the expression "strips of other vegetable material (for example, raffia, narrow leaves or strips cut from broad leaves) or bark," and inserting the expression "strips of other vegetable material (for example, strips of bark, narrow leaves and raffia or other strips obtained from broad leaves)," in lieu thereof.

138. The title of section X is modified by deleting the expression "WASTE AND SCRAP OF PAPER OR PAPERBOARD" and inserting the expression "RECOVERED (WASTE AND SCRAP) PAPER OR PAPERBOARD" in lieu thereof.

139. The title of chapter 47 is modified by deleting the expression "WASTE AND SCRAP OF PAPER OR PAPERBOARD" and inserting the expression "RECOVERED (WASTE AND SCRAP) PAPER OR PAPERBOARD" in lieu thereof.

140(a). The article description of heading 4706 is superseded by the following:

"Pulps of fibers derived from recovered (waste and scrap) paper or paperboard or of other fibrous cellulosic material:"

(b). The following new subheading is inserted in numerical order:

	[Pulps...:]		
"4706.20.00	Pulps of fibers derived from recovered (waste and scrap) paper or paperboard.....	Free	Free"

141(a). The article description of heading 4707 is modified to read as follows:

"Recovered (waste and scrap) paper and paperboard:"

(b). The article description of subheading 4707.10 is modified to read as follows:

Unbleached kraft paper or paperboard or corrugated paper or paperboard".

(c). The article description of subheading 4707.20 is modified by deleting "Of other" and by inserting in lieu thereof "Other", and the article description of subheading 4707.30 is modified by deleting "Of paper" and by inserting in lieu thereof "Paper".

142. Subdivisions (f) through (o) of note 1 to chapter 48 are redesignated as (g) through (p), respectively, and the following new subdivision (f) is inserted in alphabetical order:

"(f) Paper impregnated with diagnostic or laboratory reagents (heading 3822);"

143. Note 2 to chapter 48 is modified by deleting the expression ", for example, by coating or impregnation".

144. Note 3 to chapter 48 is modified to read as follows:

"3. In this chapter, the expression "newsprint" means uncoated paper of a kind used for the printing of newspapers, of which not less than 65 percent by weight of the total fiber content consists of wood fibers obtained by a mechanical or chemi-mechanical process, unsized or very lightly sized, having a surface roughness Parker Print Surf (1 MPa) on each side exceeding 2.5 micrometers (microns), weighing not less than 40 g/m^2 and not more than 65 g/m^2."

145(a). Note 4 to chapter 48 is modified by deleting the sentence reading "* Brightness is to be measured by the Elrepho, GE or any equivalent internationally recognized brightness testing method." and by deleting the "*" symbol wherever it appears in such note.

(b). Such note 4 to chapter 48 is further modified by deleting the expression "2.5 kPa/g/m^2" at each appearance and by inserting the expression "2.5 kPa•m^2/g" in lieu thereof.

146. Note 6 to chapter 48 is modified to read as follows:

"6. Except where the terms of the headings otherwise require, paper, paperboard, cellulose wadding and webs of cellulose fibers answering to a description in two or more of the headings 4801 to 4811 are to be classified under that one of such headings which occurs last in numerical order in the tariff schedule."

147. Note 7 to chapter 48 is modified to read as follows:

"7. (A) Headings 4801, 4802, 4804 to 4808 and 4811 apply only to paper, paperboard, cellulose wadding and webs of cellulose fibers:

(a) In strips or rolls of a width exceeding 15 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.

Except that hand-made paper and paperboard in any size or shape as made directly and having all its edges deckled remains classified, subject to the provisions of note 6, in heading 4802.

(B) Headings 4803 and 4809 apply only to paper, 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."

148. Subdivision (a) of subheading note 2 to chapter 48 is modified by deleting the expression "38" and inserting the expression "3.7 kPa•m^2/g" in lieu thereof.

149. Subheading note 3 to chapter 48 is modified by deleting the expression "20 kgf" and inserting the expression "196 newtons" in lieu thereof.

150. Subheading note 4 to chapter 48 is modified by deleting the expression "15" and inserting the expression "1.47 kPa•m^2/g" in lieu thereof.

151. The article description of heading 4803.00 is modified to read as follows:

"Toilet or facial tissue stock, towel or napkin stock and similar paper of a kind used for household or sanitary purposes, cellulose wadding and webs of cellulose fibers, whether or not creped, crinkled, embossed, perforated, surface-colored, surface decorated or printed, in rolls or sheets:"

152. The article description of heading 4805 is modified to read as follows:

"Other uncoated paper and paperboard, in rolls or sheets, not further worked or processed than as specified in note 2 to this chapter:"

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153. Subheadings 4807.91.00 (and the superior text thereto reading "Other:") and 4807.99 through 4807.99.40 are superseded by the following:

	[Composite...:]				
"4807.90	Other:				
4807.90.10	Straw paper and paperboard, whether or not covered with paper other than straw paper.....	2.2%	Free (A,CA,E, IL,J,MX)		30%
	Other:				
4807.90.20	Cloth-lined or reinforced paper.....	1.9%	Free (A,CA,E, IL,J,MX)		22.5%
4807.90.40	Other.....	Free			30%"

154. The article description of heading 4808 is modified to read as follows:

"Paper and paperboard, corrugated (with or without glued flat surface sheets), creped, crinkled, embossed or perforated, in rolls or sheets, other than paper of the kind described in heading 4803:"

155. The article description of heading 4809 is modified to read as follows:

"Carbon paper, self-copy paper and other copying or transfer papers (including coated or impregnated paper for duplicator stencils or offset plates), whether or not printed, in rolls or sheets:"

156. The article description of heading 4811 is modified to read as follows:

"Paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or sheets, other than goods of the kind described in heading 4803, 4809 or 4810:"

157. The article description of heading 4818 is modified to read as follows:

"Toilet paper and similar paper, cellulose wadding or webs of cellulose fibers, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, tablecloths, table napkins, diapers, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers:"

158(a). Subheading 4823.30.00 is deleted.

(b). The following new subheading 4823.90.30 is inserted in numerical order:

	[Other...:]				
	[Other:]				
	[Other:]				
"4823.90.30	Cards, not punched, for punchcard machines, whether or not in strips.....	3.1%	Free (A,CA,E, IL,J,MX)		30%"

159(a). Subdivision (e) of note 1 to section XI is superseded by the following:

"(e) Articles of heading 3005 or 3006 (for example, wadding, gauze, bandages and similar articles for medical, surgical, dental or veterinary purposes, sterile surgical suture materials); yarn used to clean between the teeth, in individual retail packages (dental floss), of heading 3306;"

(b). Subdivision (s) of note 1 to section XI is modified by deleting the word "or".

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159. (con.)

(c). Subdivision (t) of note 1 to section XI is modified by deleting the period (".") at the end thereof and inserting a semicolon (";") in lieu thereof.

(d). The following new subdivisions (u) and (v) of note 1 to section XI are inserted in alphabetical sequence:

"(u) Articles of chapter 96 (for example, brushes, travel sets for sewing, slide fasteners and typewriter ribbons); or"

(v) Articles of chapter 97."

160. Subdivision (b) of note 5 to section XI is modified to read as follows:

"(b) Dressed for use as sewing thread; and"

161. Subdivision (f) of note 7 to section XI is modified to read as follows:

"(f) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length."

162. Note 8 to section XI is modified to read as follows:

"8. For the purposes of chapters 50 to 60:

(a) Chapters 50 to 55 and 60 and, except where the context otherwise requires, chapters 56 to 59 do not apply to goods made up within the meaning of note 7 above; and

(b) Chapters 50 to 55 and 60 do not apply to goods of chapters 56 to 59."

163. Note 13 to section XI is modified by inserting the following new final sentence:

"For the purposes of this note, the expression "textile garments" means garments of headings 6101 to 6114 and headings 6201 to 6211."

164. Subdivision (B)(c) of subheading note 2 to section XI is modified to read as follows:

"(c) In the case of embroidery of heading 5810 and goods thereof, only the ground fabric shall be taken into account. However, embroidery without visible ground, and goods thereof, shall be classified with reference to the embroidering threads alone."

165. Note 1 to chapter 52 is modified to read as follows:

"For the purposes of subheadings 5209.42 and 5211.42, the expression "denim" means fabrics of yarns of different colors, of 3-thread or 4-thread twill, including broken twill, warp faced, the warp yarns of which are of one and the same color and the weft yarns of which are unbleached, bleached, dyed grey or colored a lighter shade of the color of the warp yarns."

Conforming change: The title "Note" is deleted and the title "Subheading Note" is inserted in lieu thereof.

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166. Subheading 5205.25.00 is superseded by the following:

	[Cotton...:]				
	[Single...:]				
"5205.26.00	Measuring less than 125 decitex but not less than 106.38 decitex (exceeding 80 metric number but not exceeding 94 metric number).....	12%	Free (IL) 2.4% (CA) 6.3% (MX)	34.1%
5205.27.00	Measuring less than 106.38 decitex but not less than 83.33 decitex (exceeding 94 metric number but not exceeding 120 metric number).....	12%	Free (IL) 2.4% (CA) 6.3% (MX)	34.1%
5205.28.00	Measuring less than 83.33 decitex (exceeding 120 metric number).....	12%	Free (IL) 2.4% (CA) 6.3% (MX)	34.1%"

167. Subheading 5205.45.00 is superseded by the following:

[Cotton...:]				
[Multiple...:]				
"5205.46.00	Measuring per single yarn less than 125 decitex but not less than 106.38 decitex (exceeding 80 metric number but not exceeding 94 metric number).....	12%	Free (IL) 2.4% (CA) 6.3% (MX)	34.1%
5205.47.00	Measuring per single yarn less than 106.38 decitex but not less than 83.33 decitex (exceeding 94 metric number but not exceeding 120 metric number).....	12%	Free (IL) 2.4% (CA) 6.3% (MX)	34.1%
5205.48.00	Measuring per single yarn less than 83.33 decitex (exceeding 120 metric number).....	12%	Free (IL) 2.4% (CA) 6.3% (MX)	34.1%"

168. The article description of subheading 5209.42.00 is modified by deleting the expression "Blue denim" and inserting the word "Denim" in lieu thereof.

169. The article description of subheading 5211.42.00 is modified by deleting the expression "Blue denim" and inserting the word "Denim" in lieu thereof.

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170. Subheadings 5407.60 through 5407.60.99 are superseded by the following:

	[Woven...:]				
	"Other woven fabrics, containing 85 percent or more by weight of polyester filaments:				
5407.61	Containing 85 percent or more by weight of non-textured polyester filaments:				
	Dyed, measuring less than 77 cm in width or less than 77 cm between selvages, the thread count of which per cm (treating multiple (folded) or cabled yarns as single threads) is over 69 but not over 142 in the warp and over 31 but not over 71 in the filling:				
5407.61.11	Wholly of polyester, of single yarns measuring not less than 75 decitex but not more than 80 decitex, having 24 filaments per yarn and with a twist of 900 or more turns per meter.....	23.3¢/kg + 21.6%	Free (IL) 4.8¢/kg + 4.5% (CA) 10.8% (MX)	24.3¢/kg + 81%
5407.61.19	Other.....	23.3¢/kg + 21.6%	Free (IL) 4.8¢/kg + 4.5% (CA) 10.8% (MX)	24.3¢/kg + 81%
	Of yarns of different colors, the thread count of which per cm (treating multiple (folded) or cabled yarns as single threads) is over 69 but not over 142 in the warp and over 31 but not over 71 in the filling:				
5407.61.21	Wholly of polyester, of single yarns measuring not less than 75 decitex but not more than 80 decitex, having 24 filaments per yarn and with a twist of 900 or more turns per meter.....	21.9¢/kg + 20.3%	Free (IL) 4.8¢/kg + 4.5% (CA) 10.6% (MX)	24.3¢/kg + 81%
5407.61.29	Other.....	21.9¢/kg + 20.3%	Free (IL) 4.8¢/kg + 4.5% (CA) 10.6% (MX)	24.3¢/kg + 81%

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170. (con.):

	[Woven...:]			
	Other woven fabrics, containing 85 percent or more by weight of polyester filaments (con.):			
5407.61 (con.)	Containing 85 percent or more by weight of non-textured polyester filaments (con.):			
	Other:			
5407.61.91	Wholly of polyester, of single yarns measuring not less than 75 decitex but not more than 80 decitex, having 24 filaments per yarn and with a twist of 900 or more turns per meter....	16.6%	Free (IL) 3.4% (CA) 8.4% (MX)	81%
5407.61.99	Other.....	16.6%	Free (IL) 3.4% (CA) 8.4% (MX)	81%
5407.69	Other:			
5407.69.10	Unbleached or bleached.....	16.6%	Free (IL) 3.4% (CA) 8.4% (MX)	81%
5407.69.20	Dyed.....	16.6%	Free (IL) 3.4% (CA) 8.4% (MX)	81%
	Of yarns of different colors:			
5407.69.30	The thread count of which per cm (treating multiple (folded) or cabled yarns as single threads) is over 69 but not over 142 in the warp and over 31 but not over 71 in the filling.....	19.4¢/kg + 18%	Free (IL) 4.8¢/kg + 4.5% (CA) 10.6% (MX)	24.3¢/kg + 81%
5407.69.40	Other.....	15.3%	Free (IL) 3.4% (CA) 8.4% (MX)	81%
5407.69.90	Printed.....	16.6%	Free (IL) 3.4% (CA) 8.4% (MX)	81%"

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171. Heading 5603.00 and subheadings 5603.00.10 through 5603.00.90 are superseded by the following:

"5603	Nonwovens, whether or not impregnated, coated, covered or laminated:			
	Of man-made filaments:			
5603.11.00	Weighing not more than 25 g/m^2.....	7.5%	Free (B,IL) 2.5% (CA) 6.5% (MX)	74%
5603.12.00	Weighing more than 25 g/m^2 but not more than 70 g/m^2.....	7.5%	Free (B,IL) 2.5% (CA) 6.5% (MX)	74%
5603.13.00	Weighing more than 70 g/m^2 but not more than 150 g/m^2.....	7.5%	Free (B,IL) 2.5% (CA) 6.5% (MX)	74%
5603.14	Weighing more than 150 g/m^2:			
5603.14.30	Laminated fabrics.....	9.6%	Free (IL) 3.2% (CA) 8% (MX)	83.5%
5603.14.90	Other.....	7.5%	Free (B,IL) 2.5% (CA) 6.5% (MX)	74%
	Other:			
5603.91.00	Weighing not more than 25 g/m^2.....	7.5%	Free (B,IL) 2.5% (CA) 6.5% (MX)	74%
5603.92.00	Weighing more than 25 g/m^2 but not more than 70 g/m^2.....	7.5%	Free (B,IL) 2.5% (CA) 6.5% (MX)	74%
5603.93.00	Weighing more than 70 g/m^2 but not more than 150 g/m^2.....	7.5%	Free (B,IL) 2.5% (CA) 6.5% (MX)	74%
5603.94	Weighing more than 150 g/m^2:			
5603.94.10	Floor covering underlays.....	2.7%	Free (B,IL) 0.6% (CA) 1.9% (MX)	40%
	Other:			
5603.94.30	Laminated fabrics.....	9.6%	Free (IL) 3.2% (CA) 8% (MX)	83.5%
5603.94.90	Other.....	7.5%	Free (B,IL) 2.5% (CA) 6.5% (MX)	74%"

172. The article description of heading 5804 is modified by deleting the expression "in motifs:" and inserting the expression "in motifs, other than fabrics of heading 6002:" in lieu thereof.

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173. Note 4 to chapter 59 is modified by inserting the word "and" after the semicolon in subdivision (b); replacing "; and" in subdivision (c) with a period; deleting subdivision (d); and inserting the following new second paragraph after subdivision (c) and appearing at the same indentation level as that subdivision designation:

"This heading does not, however, apply to plates, sheets or strip of cellular rubber, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (chapter 40), or textile products of heading 5811."

174. Subdivision (a)(i) of note 7 to chapter 59 is modified to read as follows:

"(i) Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams);"

175. The article description of heading 5910.00 is modified to read as follows:

"Transmission or conveyor belts or belting, of textile material, whether or not impregnated, coated, covered or laminated with plastics, or reinforced with metal or other material:"

176. The article description of subheading 5911.10 is modified to read as follows:

"Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams):"

177. Subdivision (a) of note 3 to chapter 61 is modified to read as follows:

"(a) The term "suit" means a set of garments composed of two or three pieces made up, in respect of their outer surface, in identical fabric and comprising:

- one suit coat or jacket the outer shell of which, exclusive of sleeves, consists of four or more panels, designed to cover the upper part of the body, possibly with a tailored waistcoat in addition whose front is made from the same fabric as the outer surface of the other components of the set and whose back is made from the same fabric as the lining of the suit coat or jacket; and

- one garment designed to cover the lower part of the body and consisting of trousers, breeches or shorts (other than swimwear), a skirt or a divided skirt, having neither braces nor bibs.

All of the components of a "suit" must be of the same fabric construction, color and composition; they must also be of the same style and of corresponding or compatible size. However, these components may have piping (a strip of fabric sewn into the seam) in a different fabric.

If several separate components to cover the lower part of the body are presented together (for example, two pairs of trousers or trousers and shorts, or a skirt or divided skirt and trousers), the constituent lower part shall be one pair of trousers or, in the case of women's or girls' suits, the skirt or divided skirt, the other garments being considered separately.

177. (con.):

The term "suit" includes the following sets of garments, whether or not they fulfill all the above conditions:

- morning dress, comprising a plain jacket (cutaway) with rounded tails hanging well down at the back and striped trousers;
- evening dress (tailcoat), generally made of black fabric, the jacket of which is relatively short at the front, does not close and has narrow skirts cut in at the hips and hanging down behind;
- dinner jacket suits, in which the jacket is similar in style to an ordinary jacket (though perhaps revealing more of the shirt front), but has shiny silk or imitation silk lapels."

178. Notes 5 through 9 to chapter 61 are redesignated as notes 6 through 10, respectively, and the following new note 5 is inserted:

"5. Heading 6109 does not cover garments with a drawstring, ribbed waistband or other means of tightening at the bottom of the garment." ,

179. Subheading 6115.12.00 is superseded by the following:

	[Panty...:]				
	[Panty...:]				
"6115.12	Of synthetic fibers, measuring per single yarn 67 decitex or more:				
6115.12.10	Surgical panty hose with graduated compression for orthopedic treatment	3.5%	Free (A,E,IL,J, MX) 1.1% (CA)	40%	
6115.12.20	Other	16.6%	Free (IL) 3.4% (CA) 8.4% (MX)	72%	

180. Subheadings 6115.19.10 and 6115.19.90 are superseded by the following:

[Panty...:]				
[Panty...:]				
[Of other...:]				
"6115.19.20	Surgical panty hose with graduated compression for orthopedic treatment	3.5%	Free (A,E,IL,J, MX) 1.1% (CA)	40%
	Other:			
6115.19.40	Containing 70 percent of more by weight of silk or silk waste	14.1%	Free (E,IL,J) 3.4% (CA) 8.4% (MX)	90%
6115.19.80	Other	16.8%	Free (E*,IL) 3.4% (CA) 8.4% (MX)	90%"

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181. Subheadings 6115.92.10 and 6115.92.20 are superseded by the following:

	[Panty...:]				
	[Other:]				
	[Of cotton:]				
"6115.92.30	Surgical stockings with graduated compression for orthopedic treatment.....	3.5%	Free (A,E,IL,J, MX) 1.1% (CA)	40%
	Other:				
6115.92.60	Containing lace or net.....	18%	Free (IL) 4% (CA) 9.6% (MX)	90%
6115.92.90	Other.....	14.2%	Free (IL) 2.8% (CA) 7.3% (MX)	51%"

182. Subheadings 6115.93.10, 6115.93.15 and 6115.93.20 are superseded by the following:

[Panty...:]				
[Other:]				
[Of synthetic fibers:]				
"6115.93.30	Surgical stockings with graduated compression for orthopedic treatment.....	3.5%	Free (A,E,IL,J, MX) 1.1% (CA)	40%
	Other:			
6115.93.60	Containing lace or net.....	19.8%	Free (IL) 4% (CA) 9.6% (MX)	90%
6115.93.90	Other.....	15.3%	Free (IL) 3.1% (CA) 7.8% (MX)	51%"

Conforming change: The article description of subheading 9905.90.09 is modified by deleting the expression "subheading 9021.19" and inserting the expression "subheading 6115.12.10, 6115.19.20, 6115.92.30, 6115.93.30 or 9021.19" in lieu thereof.

183. The article description of subheading 6116.10 is modified to read as follows:

"Impregnated, coated or covered with plastics or rubber:"

184. Subdivision (a) of note 3 to chapter 62 is modified to read as follows:

"(a) The term "suit" means a set of garments composed of two or three pieces made up, in respect of their outer surface, in identical fabric and comprising:

- one suit coat or jacket the outer shell of which, exclusive of sleeves, consists of four or more panels, designed to cover the upper part of the body, possibly with a tailored waistcoat in addition whose front is made from the same fabric as the outer surface of the other components of the set and whose back is made from the same fabric as the lining of the suit coat or jacket; and

- one garment designed to cover the lower part of the body and consisting of trousers, breeches or shorts (other than swimwear), a skirt or a divided skirt, having neither braces nor bibs.

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184. (con.):

All of the components of a "suit" must be of the same fabric construction, color and composition; they must also be of the same style and of corresponding or compatible size. However, these components may have piping (a strip of fabric sewn into the seam) in a different fabric.

If several separate components to cover the lower part of the body are presented together (for example, two pairs of trousers or trousers and shorts, or a skirt or divided skirt and trousers), the constituent lower part shall be one pair of trousers or, in the case of women's or girls' suits, the skirt or divided skirt, the other garments being considered separately.

The term "suit" includes the following sets of garments, whether or not they fulfill all the above conditions:

- morning dress, comprising a plain jacket (cutaway) with rounded tails hanging well down at the back and striped trousers;
- evening dress (tailcoat), generally made of black fabric, the jacket of which is relatively short at the front, does not close and has narrow skirts cut in at the hips and hanging down behind;
- dinner jacket suits, in which the jacket is similar in style to an ordinary jacket (though perhaps revealing more of the shirt front), but has shiny silk or imitation silk lapels."

185. Subheading 6305.31.00 is superseded by the following:

	[Sacks...:]			
	[Of man-made...:]			
"6305.32.00	Flexible intermediate bulk containers....	9.3%	Free (IL) 1.9% (CA) 5.1% (MX)	103%
6305.33.00	Other, of polyethylene or polypropylene strip or the like.....	9.3%	Free (IL) 1.9% (CA) 5.1% (MX)	103%"

186(a). Subdivision (a) of note 1 to chapter 64 is modified to read as follows:

"(a) Disposable foot or shoe coverings of flimsy material (for example, paper, sheeting of plastics) without applied soles. These products are classified according to their constituent material;"

(b). Subdivisions (b) through (e) of note 1 to chapter 64 are redesignated as subdivisions (c) through (f), respectively, and the following new subdivision (b) is inserted:

"(b) Footwear of textile material, without an outer sole glued, sewn or otherwise affixed or applied to the upper (section XI);"

187. Note 2 to chapter 64 is modified to read as follows:

"2. For the purposes of heading 6406, the term "parts" does not include pegs, protectors, eyelets, hooks, buckles, ornaments, braid, laces, pompons or other trimmings (which are to be classified in their appropriate headings) or buttons or other goods of heading 9606."

188. Note 3 to chapter 64 is modified to read as follows:

"3. For the purposes of this chapter:

(a) The terms "rubber" and "plastics" include woven fabrics or other textile products with an external layer of rubber or plastics being visible to the naked eye; for the purpose of this provision, no account should be taken of any resulting change of color; and

(b) The term "leather" refers to the goods of headings 4104 to 4109."

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189(a). Subheading note 1 to chapter 64 is modified by deleting the expressions "6402.11" and "6403.11" and substituting the expressions "6402.12" and "6403.12", respectively, in lieu thereof.

(b). Subdivision (b) of such subheading note 1 is modified by inserting the expression "snowboard boots," after the expression "cross-country ski footwear,".

190. The article description of subheading 6401.92.30 is modified to read as follows:

"Ski-boots and snowboard boots"

191. Subheading 6402.11.00 is superseded by the following:

	[Other...:]				
	[Sports...:]				
"6402.12.00	Ski-boots, cross-country ski footwear and snowboard boots.....	3.6%	Free (IL,MX) 1.2% (CA)		35%"

192. Subheadings 6403.11, 6403.11.30 and 6403.11.60 are superseded by the following:

	[Footwear...]				
	[Sports...:]				
"6403.12	Ski-boots, cross-country ski footwear and snowboard boots:				
6403.12.30	Welt footwear.....	Free			20%
6403.12.60	Other.....	6%	Free (IL,MX) 2% (CA)		20%"

193. Subheading 6810.20.00 is deleted.

194. The article description of heading 6815 is modified by deleting the expression "including articles of peat)" and inserting the expression "including carbon fibers, articles of carbon fibers and articles of peat)" in lieu thereof.

195. Subdivisions (b) through (l) of note 2 to chapter 69 are redesignated as subdivisions (c) through (m), respectively, and the following new subdivision (b) is inserted:

"(b) Articles of heading 6804;"

196. The article description of subheading 6903.10.00 is modified to read as follows:

"Containing by weight more than 50 percent of graphite or other carbon or of a mixture of these products"

197. The following new subheading 6909.12.00 is inserted in numerical sequence:

	[Ceramic...:]				
	[Ceramic...:]				
"6909.12.00	Articles having a hardness equivalent to 9 or more on the Mohs scale.....	6.4%	Free (A,E,IL,J, MX) 1.6% (CA)		45%"

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198. Subdivision (c) of note 2 to chapter 70 is modified to read as follows:

"(c) The expression "absorbent, reflecting or non-reflecting layer" means a microscopically thin coating of metal or of a chemical compound (for example, metal oxide) which absorbs, for example, infrared light; or which improves the reflecting qualities of the glass while still allowing it to retain a degree of transparency or translucency; or which prevents light from being reflected on the surface of the glass."

199(a). The article description of heading 7003 is modified by deleting the expression "absorbent or reflecting" and inserting the expression "absorbent, reflecting or non-reflecting" in lieu thereof.

(b). Subheading 7003.11.00 is redesignated as subheading 7003.12.00, and its article description is modified by deleting the expression "absorbent or reflecting" and inserting the expression "absorbent, reflecting or non-reflecting" in lieu thereof.

200(a). The article description of heading 7004 is modified by deleting the expression "absorbent or reflecting" and inserting the expression "absorbent, reflecting or non-reflecting" in lieu thereof.

(b). Subheading 7004.10 is redesignated as subheading 7004.20, and its article description is modified by deleting the expression "absorbent or reflecting" and inserting the expression "absorbent, reflecting or non-reflecting" in lieu thereof.

(c). Subheading 7004.10.10 is redesignated as 7004.20.10, and its article description is modified by deleting the expression "absorbent or reflecting" and inserting the expression "absorbent, reflecting or non-reflecting" in lieu thereof.

(d). Subheadings 7004.10.20 and 7004.10.50 are redesignated as 7004.20.20 and 7004.20.50, respectively.

201(a). The article description of heading 7005 is modified by deleting the expression "absorbent or reflecting" and inserting the expression "absorbent, reflecting or non-reflecting" in lieu thereof.

(b). Subheading 7005.10 is modified by deleting the expression "absorbent or reflecting" and inserting the expression "absorbent, reflecting or non-reflecting" in lieu thereof.

202. Subheadings 7010.90 and 7010.90.05 through 7010.90.50 are superseded by the following:

	[Carboys,...:]				
"7010.20	Stoppers, lids and other closures:				
7010.20.20	Produced by automatic machine.....	3.2%		Free (A,E,IL,J, MX) 0.7% (CA)	25%
7010.20.30	Other.....	6.6%		Free (A,E,IL,J, MX) 1.5% (CA)	75%

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202. (con.):

	[Carboys,...:] [con.]			
	Other, of a capacity:			
7010.91	Exceeding 1 liter:			
7010.91.05	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:			
7010.91.20	Produced by automatic machine.....	3.2%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
7010.91.30	Other.....	6.6%	Free (A,E,IL,J, MX) 1.5% (CA)	75%
7010.91.50	Other containers (with or without their closures).....	Free		4.9%
7010.92	Exceeding 0.33 liter but not exceeding 1 liter:			
7010.92.05	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:			
7010.92.20	Produced by automatic machine.....	3.2%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
7010.92.30	Other.....	6.6%	Free (A,E,IL,J, MX) 1.5% (CA)	75%
7010.92.50	Other containers (with or without their closures).....	Free		4.9%
7010.93	Exceeding 0.15 liter but not exceeding 0.33 liter:			
7010.93.05	Serum bottles, vials and other pharmaceutical containers.....	Free		50¢/ gross

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202. (con.):

	[Carboys,...:] [con.]			
	Other, of a capacity (con.):			
7010.93 (con.)	Exceeding 0.15 liter but not exceeding 0.33 liter (con.):			
	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:			
7010.93.20	Produced by automatic machine	3.2%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
7010.93.30	Other	6.6%	Free (A,E,IL,J, MX) 1.5% (CA)	75%
7010.93.50	Other containers (with or without their closures)	Free		4.9%
7010.94	Not exceeding 0.15 liter:			
7010.94.05	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:			
7010.94.20	Produced by automatic machine	3.2%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
7010.94.30	Other	6.6%	Free (A,E,IL,J, MX) 1.5% (CA)	75%
7010.94.50	Other containers (with or without their closures)	Free		4.9%"

203. Subheadings 7019.10 through 7019.90.50 are superseded by the following:

	[Glass...:]			
	"Slivers, rovings, yarn and chopped strands:			
7019.11.00	Chopped strands, of a length of not more than 50 mm	5.7%	Free (A,CA,E,IL, J,MX)	50%
7019.12.00	Rovings	5.5%	Free (A,E,IL,J, MX) 1.2% (CA)	50%

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203. (con.):

	[Glass...:] [con.]			
	Slivers, rovings, yarn and chopped strands (con.):			
7019.19	Other:			
	Yarns:			
	Not colored:			
7019.19.05	Fiberglass rubber reinforcing yarn, made from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds.....	Free		50%
7019.19.15	Other.....	7.2%	Free (CA,IL) 4.1% (MX)	50%
	Colored:			
7019.19.24	Fiberglass rubber reinforcing yarn, made from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds.....	Free		60%
7019.19.28	Other.....	9.1%	Free (CA,IL) 5.2% (MX)	60%
7019.19.30	Chopped strands, of a length more than 50 mm.....	5.7%	Free (A,CA,E,IL, J,MX)	50%
7019.19.70	Fiberglass rubber reinforcing cord, made from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds.....	Free		50%
7019.19.90	Other.....	4.2%	Free (CA,E*,IL, J*) 2.4% (MX)	50%

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203. (con.):

	[Glass...:] [con.]			
	Thin sheets (voiles), webs, mats, mattresses, boards and similar nonwoven products:			
7019.31.00	Mats.....	5.4%	Free (A,B,CA,E, IL,J,MX)	50%
7019.32.00	Thin sheets (voiles).....	5.4%	Free (A,B,E,IL, J,MX) 1.2% (CA)	50%
7019.39	Other:			
7019.39.10	Insulation products.....	5.7%	Free (A,B,E,IL, J,MX) 1.2% (CA)	50%
7019.39.50	Other.....	5.7%	Free (A,B,E,IL, J,MX) 1.2% (CA)	50%
7019.40	Woven fabrics of rovings:			
	Of a width not exceeding 30 cm:			
7019.40.05	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds.....	Free		50%
7019.40.15	Other.....	6%	Free (IL) 1.2% (CA) 3.3% (MX)	50%
	Other:			
	Not colored:			
7019.40.30	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds.....	Free		50%
7019.40.40	Other.....	8.1%	Free (IL) 1.6% (CA) 4.5% (MX)	50%
	Colored:			
7019.40.70	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds.....	Free		60%
7019.40.90	Other.....	10.3%	Free (IL) 2.2% (CA) 5.9% (MX)	60%

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203. (con.):

	[Glass...:] [con.]			
	Other woven fabrics:			
7019.51	Of a width not exceeding 30 cm:			
7019.51.10	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds.....	Free		50%
7019.51.90	Other.....	6%	Free (IL) 1.2% (CA) 3.3% (MX)	50%
7019.52	Of a width exceeding 30 cm, plain weave, weighing less than 250 g/m^2, of filaments measuring per single yarn not more than 136 tex:			
	Not colored:			
7019.52.30	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds.....	Free		50%
7019.52.40	Other.....	8.1%	Free (IL) 1.6% (CA) 4.5% (MX)	50%
	Colored:			
7019.52.70	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds.....	Free		60%
7019.52.90	Other.....	10.3%	Free (IL) 2.2% (CA) 5.9% (MX)	60%

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203. (con.):

	[Glass...:] [con.]			
	Other woven fabrics (con.):			
7019.59	Other:			
	Not colored:			
7019.59.30	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds.....	Free		50%
7019.59.40	Other.....	8.1%	Free (IL) 1.6% (CA) 4.5% (MX)	50%
	Colored:			
7019.59.70	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter to 11 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds.....	Free		60%
7019.59.90	Other.....	10.3%	Free (IL) 2.2% (CA) 5.9% (MX)	60%
7019.90	Other:			
7019.90.10	Woven.....	6.1%	Free (E,IL,J,MX) 1.3% (CA)	60%
7019.90.50	Other.....	5.4%	Free (A,B,E,IL, J,MX) 1.2% (CA)	50%"

Conforming change: Additional U.S. note 6 to chapter 70 is deleted.

204(a). Subdivisions (d) through (o) of note 3 to chapter 71 are redesignated as (e) through (p), respectively, and the following new subdivision (d) is inserted:

"(d) Supported catalysts (heading 3815);"

(b). Subdivision (e) (as redesignated) of note 3 to chapter 71 is modified to read as follows:

"(e) Articles of heading 4202 or 4203 referred to in note 2(B) to chapter 42;"

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205. Notes 8, 9 and 10 to chapter 71 are redesignated as notes 9, 10 and 11, respectively, and the following new note 8 is inserted in numerical sequence:

"8. Subject to note 1(a) to section VI, goods answering to a description in heading 7112 are to be classified in that heading and in no other heading of the tariff schedule."

Conforming change: Note 11 (as redesignated) to chapter 71 is modified by deleting the expression "note 8" and inserting the expression "note 9" in lieu thereof.

206(a). The article description of heading 7101 is modified by deleting the expression "ungraded".

(b). Subheadings 7101.10.00 and 7101.22.00 are superseded by the following:

	[Pearls,...:]				
"7101.10	Natural pearls:				
7101.10.30	Graded and temporarily strung for convenience of transport.....	Free			10%
7101.10.60	Other.....	Free			10%
	[Cultured pearls:]				
7101.22	Worked:				
7101.22.30	Graded and temporarily strung for convenience of transport.....	1.3%	Free (A,CA,E, IL,J,MX)		10%
7101.22.60	Other.....	1.3%	Free (A,CA,E, IL,J,MX)		10%"

207. The article description of heading 7112 is modified by deleting the expression "clad with precious metal:" and inserting the following in lieu thereof:

"clad with precious metal; other waste and scrap containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal:"

208. Subheadings 7116.10.15 and 7116.10.20 are superseded by the following:

	[Articles...:]				
	[Of...:]				
"7116.10.25	Cultured.....	8.8%	Free (A,CA,E IL,J,MX)		110%"

209. Notes 3 through 6 to section XV are redesignated as 5 through 8, respectively, and the following new section notes 3 and 4 are inserted in numerical sequence:

"3. Throughout the schedule, the expression "base metals" means: iron and steel, copper, nickel, aluminum, lead, zinc, tin, tungsten (wolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium.

4. Throughout the schedule, the term "cermets" means products containing a microscopic heterogeneous combination of a metallic component and a ceramic component. The term "cermets" includes sintered metal carbides (metal carbides sintered with a metal)."

210. Note 6 and note 7(b) (as redesignated) to section XV are each modified by deleting the expression "note 3" and inserting the expression "note 5" in lieu thereof.

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211. Additional U.S. note 1 to section XV is deleted, and additional U.S. note 2 is redesignated as additional U.S. note 1 and the title "Additional U.S. Notes" modified to read "Additional U.S. Note".

212(a). Subdivision (l) of note 1 to chapter 72 is modified to read as follows:

"(l) Bars and rods, hot-rolled, in irregularly wound coils

Hot-rolled products in irregularly wound coils, which have a solid cross-section in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles or other convex polygons (including "flattened circles" and "modified rectangles", of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel). These products may have indentations, ribs, grooves or other deformations produced during the rolling process (reinforcing bars and rods)."

(b). Subdivision (m) of note 1 to chapter 72 is modified to read as follows:

"(m) Other bars and rods

Products which do not conform to any of the definitions at (ij), (k) or (l) above or to the definition of wire, which have a uniform solid cross-section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles or other convex polygons (including "flattened circles" and "modified rectangles", of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel). These products may:

- have indentations, ribs, grooves or other deformations produced during the rolling process (reinforcing bars and rods);

- be twisted after rolling."

213. Subdivision (e) of subheading note 1 to chapter 72 is modified to read as follows:

"(e) Silico-manganese steel

Alloy steels containing by weight:

- not more than 0.7 percent of carbon,

- 0.5 percent or more but not more than 1.9 percent of manganese, and

- 0.6 percent or more but not more than 2.3 percent of silicon, but no other element in a proportion that would give the steel the characteristics of another alloy steel."

214. Subheadings 7201.30.00 and 7201.40.00 are superseded by the following:

	[Pig...:]				
"7201.50	Alloy pig iron; spiegeleisen:				
7201.50.30	Alloy pig iron.....	Free			$1.11/t
7201.50.60	Spiegeleisen.....	0.1%		Free (CA,E,IL,J, MX)	0.5%"

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215. Heading 7208 (including its subordinate provisions) is superseded by the following:

"7208	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated:			
7208.10	In coils, not further worked than hot-rolled, with patterns in relief:			
7208.10.15	Pickled	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%
	Other:			
7208.10.30	Of a thickness of 4.75 mm or more	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%
7208.10.60	Of a thickness of less than 4.75 mm	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%
	Other, in coils, not further worked than hot-rolled, pickled:			
7208.25	Of a thickness of 4.75 mm or more:			
7208.25.30	Of high-strength steel	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%
7208.25.60	Other	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%
7208.26.00	Of a thickness of 3 mm or more but less than 4.75 mm	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%
7208.27.00	Of a thickness of less than 3 mm	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%
	Other, in coils, not further worked than hot-rolled:			
7208.36.00	Of a thickness exceeding 10 mm	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%
7208.37.00	Of a thickness of 4.75 mm or more but not exceeding 10 mm	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%
7208.38.00	Of a thickness of 3 mm or more but less than 4.75 mm	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%
7208.39.00	Of a thickness of less than 3 mm	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%
7208.40	Not in coils, not further worked than hot-rolled, with patterns in relief:			
7208.40.30	Of a thickness of 4.75 mm or more	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%
7208.40.60	Of a thickness less than 4.75 mm	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%

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215. (con.):

7208 (con.)	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated (con.): Other, not in coils, not further worked than hot-rolled:				
7208.51.00	Of a thickness exceeding 10 mm	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%	
7208.52.00	Of a thickness of 4.75 mm or more but not exceeding 10 mm	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%	
7208.53.00	Of a thickness of 3 mm or more but less than 4.75 mm	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%	
7208.54.00	Of a thickness of less than 3 mm	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%	
7208.90.00	Other	4%	Free (E,IL,J) 1% (CA) 3.5% (MX)	20%"	

216. Heading 7209 (including its subordinate provisions) is superseded by the following:

"7209	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated: In coils, not further worked than cold-rolled (cold-reduced):				
7209.15.00	Of a thickness of 3 mm or more	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	
7209.16.00	Of a thickness exceeding 1 mm but less than 3 mm	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	
7209.17.00	Of a thickness of 0.5 mm or more but not exceeding 1 mm	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	
7209.18	Of a thickness of less than 0.5 mm:				
7209.18.15	Of high-strength steel	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	
	Other:				
7209.18.25	Of a thickness of less than 0.361 mm (blackplate)	2.6%	Free (E,IL,J) 0.6% (CA) 2.2% (MX)	20%	
7209.18.60	Other	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	

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216. (con.):

7209 (con.)	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated (con.):			
	Not in coils, not further worked than cold-rolled (cold-reduced):			
7209.25.00	Of a thickness of 3 mm or more.....	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%
7209.26.00	Of a thickness exceeding 1 mm but less than 3 mm.....	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%
7209.27.00	Of a thickness of 0.5 mm or more but not exceeding 1 mm.....	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%
7209.28.00	Of a thickness of less than 0.5 mm.....	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%
7209.90.00	Other.....	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%"

217. Subheadings 7210.31.00 and 7210.39.00 and the superior text thereto reading "Electrolytically plated or coated with zinc:" are superseded by the following:

	[Flat-rolled...:]			
"7210.30.00	Electrolytically plated or coated with zinc.....	5.2%	Free (E,IL,J) 1.3% (CA) 4.5% (MX)	21.5%"

218. Subheading 7210.60.00 is superseded by the following:

	[Flat-rolled...:]			
	"Plated or coated with aluminum:			
7210.61.00	Plated or coated with aluminum-zinc alloys.....	5.2%	Free (E,IL,J) 1.3% (CA) 4.5% (MX)	21.5%
7210.69.00	Other.....	5.2%	Free (E,IL,J) 1.3% (CA) 4.5% (MX)	21.5%"

219. Heading 7211 (including its subordinate provisions) is superseded by the following:

"7211	Flat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, not clad, plated or coated:			
	Not further worked than hot-rolled:			
7211.13.00	Universal mill plate.....	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%
7211.14.00	Other, of a thickness of 4.75 mm or more.....	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%

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219. (con.):

7211 (con.)	Flat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, not clad, plated or coated (con.):				
	Not further worked than hot-rolled (con.):				
7211.19	Other:				
	Of a width of less than 300 mm:				
7211.19.15	Of high-strength steel.....	4.6%	Free (E,IL,J) 1.1% (CA) 3.9% (MX)	25%	
	Other:				
7211.19.20	Of a thickness exceeding 1.25 mm.....	4.6%	Free (E,IL,J) 1.1% (CA) 3.9% (MX)	25%	
7211.19.30	Other.....	2.7%	Free (E,IL,J) 0.6% (CA) 2.3% (MX)	25%	
	Other:				
7211.19.45	Of high-strength steel.....	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%	
	Other:				
7211.19.60	Pickled.....	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	
7211.19.75	Other.....	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%	
	Not further worked than cold-rolled (cold-reduced):				
7211.23	Containing by weight less than 0.25 percent of carbon:				
	Of a width of less than 300 mm:				
	Of a thickness exceeding 1.25 mm:				
7211.23.15	Of high-strength steel.....	2.7%	Free (E,IL,J) 0.6% (CA) 2.3% (MX)	25%	
7211.23.20	Other.....	4.6%	Free (E,IL,J) 1.1% (CA) 3.9% (MX)	25%	
7211.23.30	Of a thickness exceeding 0.25 mm but not exceeding 1.25 mm.....	2.7%	Free (E,IL,J) 0.6% (CA) 2.3% (MX)	25%	
7211.23.45	Of a thickness not exceeding 0.25 mm.....	1.9%	Free (E,IL,J) 0.4% (CA) 1.6% (MX)	25%	
7211.23.60	Other.....	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%	

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219. (con.):

7211 (con.)	Flat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, not clad, plated or coated (con.):			
	Not further worked than cold-rolled (cold-reduced) (con.):			
7211.29	Other:			
	Of a width of less than 300 mm:			
7211.29.20	Of a thickness exceeding 0.25 mm	2.7%	Free (E,IL,J) 0.6% (CA) 2.3% (MX)	25%
7211.29.45	Other	1.9%	Free (E,IL,J) 0.4% (CA) 1.6% (MX)	25%
7211.29.60	Other	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	0.4¢/kg + 20%
7211.90.00	Other	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	20%"

220. Subheadings 7212.21.00 and 7212.29.00 and the superior text thereto reading "Electrolytically plated or coated with zinc:" are superseded by the following:

	[Flat-rolled...:]			
"7212.20.00	Electrolytically plated or coated with zinc	5.2%	Free (E,IL,J) 1.3% (CA) 4.5% (MX)	21.5%"

221. Heading 7213 (including its subordinate provisions) is superseded by the following:

"7213	Bars and rods, hot-rolled, in irregularly wound coils, of iron or nonalloy steel:			
7213.10.00	Concrete reinforcing bars and rods	3.9%	Free (E,IL,J) 0.9% (CA) 3.4% (MX)	20%
7213.20.00	Other, of free-cutting steel	1.5%	Free (E,IL,J) 0.3% (CA) 1.3% (MX)	5.5%
	Other:			
7213.91	Of circular cross section measuring less than 14 mm in diameter:			
7213.91.30	Not tempered, not treated and not partly manufactured	1.5%	Free (E,IL,J) 0.3% (CA) 1.3% (MX)	5.5%
	Other:			
7213.91.45	Containing by weight 0.6 percent or more of carbon	1.5%	Free (E,IL,J) 0.3% (CA) 1.3% (MX)	5.5%
7213.91.60	Other	1.8%	Free (E,IL,J) 0.4% (CA) 1.6% (MX)	6%
7213.99.00	Other	1.5%	Free (E,IL,J) 0.3% (CA) 1.3% (MX)	5.5%"

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222. Subheadings 7214.30.00 through 7214.60.00 are superseded by the following:

	[Other...:]			
"7214.30.00	Other, of free-cutting steel.....	3.8%	Free (E,IL,J) 0.9% (CA) 3.2% (MX)	20%
	Other:			
7214.91.00	Of rectangular (other than square) cross section.....	3.8%	Free (E,IL,J) 0.9% (CA) 3.2% (MX)	20%
7214.99.00	Other.....	3.8%	Free (E,IL,J) 0.9% (CA) 3.2% (MX)	20%"

223. Subheadings 7215.20.00, 7215.30.00, and 7215.40.00 are superseded by the following:

	[Other...:]			
"7215.50.00	Other, not further worked than cold-formed or cold-finished.....	6%	Free (E,IL,J) 1.5% (CA) 5.2% (MX)	0.3¢/kg + 20%"

224. Subheadings 7216.60.00 and 7216.90.00 are superseded by the following:

	[Angles,...:]			
	"Angles, shapes and sections, not further worked than cold-formed or cold-finished:			
7216.61.00	Obtained from flat-rolled products.....	3.9%	Free (A,E,IL,J, MX) 0.9% (CA)	20%
7216.69.00	Other.....	3.9%	Free (A,E,IL,J, MX) 0.9% (CA)	20%
	Other:			
7216.91.00	Cold-formed or cold-finished from flat-rolled products.....	3.5%	Free (E,IL,J) 0.8% (CA) 3% (MX)	20%
7216.99.00	Other.....	3.5%	Free (E,IL,J) 0.8% (CA) 3% (MX)	20%"

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225. Heading 7217 (including its subordinate provisions) is superseded by the following:

"7217	Wire of iron or nonalloy steel:			
7217.10	Not plated or coated, whether or not polished:			
	Containing by weight less than 0.25 percent of carbon:			
	Flat wire:			
7217.10.10	Of a thickness not exceeding 0.25 mm	3.4%	Free (E,IL,J) 0.8% (CA) 2.9% (MX)	25%
7217.10.20	Of a thickness exceeding 0.25 mm but not exceeding 1.25 mm	2.6%	Free (E,IL,J) 0.6% (CA) 2.2% (MX)	25%
7217.10.30	Of a thickness exceeding 1.25 mm	4.1%	Free (E,IL,J) 1% (CA) 3.5% (MX)	25%
	Round wire:			
7217.10.40	With a diameter of less than 1.5 mm	4.2%	Free (E,IL,J) 1% (CA) 3.7% (MX)	25%
7217.10.50	With a diameter of 1.5 mm or more	1.2%	Free (E,IL,J) 0.3% (CA) 1% (MX)	7%
7217.10.60	Other wire	4.4%	Free (E,IL,J) 1.1% (CA) 3.8% (MX)	25%
	Other:			
7217.10.70	Flat wire	2.6%	Free (E,IL,J) 0.6% (CA) 2.2% (MX)	25%
7217.10.80	Round wire	4.2%	Free (E,IL,J) 1% (CA) 3.7% (MX)	25%
7217.10.90	Other wire	4.4%	Free (E,IL,J) 1.1% (CA) 3.8% (MX)	25%
7217.20	Plated or coated with zinc:			
7217.20.15	Flat wire	4.2%	Free (E,IL,J) 1% (CA) 3.6% (MX)	26%
	Round wire:			
7217.20.30	With a diameter of 1.5 mm or more and containing by weight less than 0.25 percent of carbon	1.2%	Free (E,IL,J) 0.3% (CA) 1% (MX)	7%
7217.20.45	Other	4.2%	Free (E,IL,J) 1% (CA) 3.7% (MX)	25%
	Other:			
7217.20.60	Containing by weight less than 0.25 percent of carbon	4.5%	Free (E,IL,J) 1.1% (CA) 3.9% (MX)	25%
7217.20.75	Other	4.2%	Free (E,IL,J) 1% (CA) 3.6% (MX)	26%

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225. (con.):

7217 (con.)	Wire of iron or nonalloy steel (con.):			
7217.30	Plated or coated with other base metals:			
7217.30.15	Flat wire	4.2%	Free (E,IL,J) 1% (CA) 3.6% (MX)	26%
	Round wire:			
7217.30.30	With a diameter of 1.5 mm or more and containing by weight less than 0.25 percent of carbon	1.2%	Free (E,IL,J) 0.3% (CA) 1% (MX)	7%
7217.30.45	Other	4.2%	Free (E,IL,J) 1% (CA) 3.7% (MX)	25%
	Other:			
7217.30.60	Containing by weight less than 0.25 percent of carbon	4.5%	Free (E,IL,J) 1.1% (CA) 3.9% (MX)	25%
7217.30.75	Other	4.2%	Free (E,IL,J) 1% (CA) 3.6% (MX)	26%
7217.90	Other:			
7217.90.10	Coated with plastics	0.7%	Free (E,IL,J) 0.1% (CA) 0.6% (MX)	2%
7217.90.50	Other	4.2%	Free (E,IL,J) 1% (CA) 3.7% (MX)	35%"

226. Subheading 7218.90.00 is superseded by the following:

	[Stainless...:]			
	"Other:			
7218.91.00	Of rectangular (other than square) cross-section	4.2%	Free (E,IL,J) 1% (CA) 3.6% (MX)	29%
7218.99.00	Other	4.2%	Free (E,IL,J) 1% (CA) 3.6% (MX)	29%"

227. Subheading 7222.10 is superseded by the following:

	[Other...:]			
	"Bars and rods, not further worked than hot-rolled, hot-drawn or extruded:			
7222.11.00	Of circular cross-section	8.5%	Free (E,IL,J) 2.1% (CA) 7.4% (MX)	29%
7222.19.00	Other	8.5%	Free (E,IL,J) 2.1% (CA) 7.4% (MX)	29%"

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228. Subheading 7225.10.00 is superseded by the following:

	[Flat-rolled...:]			
	"Of silicon electrical steel:			
7225.11.00	Grain-oriented.....	4.6%	Free (CA,E,IL, J,MX)	28%
7225.19.00	Other.....	4.6%	Free (CA,E,IL, J,MX)	28%"

229. Subheading 7225.90.00 is superseded by the following:

	[Flat-rolled...:]			
	"Other:			
7225.91.00	Electrolytically plated or coated with zinc.....	4.6%	Free (A,E,IL,J, MX) 1.1% (CA)	28%
7225.92.00	Otherwise plated or coated with zinc.....	4.6%	Free (A,E,IL,J, MX) 1.1% (CA)	28%
7225.99.00	Other.....	4.6%	Free (A,E,IL,J, MX) 1.1% (CA)	28%"

230. Subheadings 7226.10, 7226.10.10 and 7226.10.50 are superseded by the following:

	[Flat-rolled...:]			
	"Of silicon electrical steel:			
7226.11	Grain-oriented:			
7226.11.10	Of a width of 300 mm or more.....	4.6%	Free (CA,E,IL, J,MX)	28%
7226.11.90	Of a width of less than 300 mm.....	5.6%	Free (CA,E,IL, J,MX)	33%
7226.19	Other:			
7226.19.10	Of a width of 300 mm or more.....	4.6%	Free (CA,E,IL, J,MX)	28%
7226.19.90	Of a width of less than 300 mm.....	5.6%	Free (CA,E,IL, J,MX)	33%"

231. The following new subheadings 7226.93.00 and 7226.94.00 are inserted in numerical sequence:

	[Flat-rolled...:]			
	[Other:]			
"7226.93.00	Electrolytically plated or coated with zinc.....	5%	Free (E,IL,J) 1.2% (CA) 4.4% (MX)	33%
7226.94.00	Otherwise plated or coated with zinc.....	5%	Free (E,IL,J) 1.2% (CA) 4.4% (MX)	33%"

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232. Subheadings 7304.20 through 7304.20.80 are superseded by the following:

	[Tubes,...:]			
	"Casing, tubing and drill pipe, of a kind used in drilling for oil or gas:			
7304.21	Drill pipe:			
7304.21.30	Of iron or nonalloy steel.....	6.4%	Free (E,IL,J) 1.6% (CA) 5.6% (MX)	25%
7304.21.60	Of alloy steel.....	6%	Free (E,IL,J) 1.5% (CA) 5.2% (MX)	35%
7304.29	Other:			
	Casing:			
	Of iron or nonalloy steel:			
7304.29.10	Threaded or coupled.....	4.8%	Free (E,IL,J) 1.2% (CA) 4.2% (MX)	20%
7304.29.20	Other.....	0.4%	Free (E,IL,J) 0.1% (CA) 0.3% (MX)	1%
	Of alloy steel:			
7304.29.30	Threaded or coupled.....	5%	Free (E,IL,J) 1.2% (CA) 4.3% (MX)	28%
7304.29.40	Other.....	2.6%	Free (E,IL,J) 0.6% (CA) 2.3% (MX)	8.5%
	Tubing:			
7304.29.50	Of iron or nonalloy steel.....	6.4%	Free (E,IL,J) 1.6% (CA) 5.6% (MX)	25%
7304.29.60	Of alloy steel.....	6%	Free (E,IL,J) 1.5% (CA) 5.2% (MX)	35%"

233. The article description of heading 7305 is modified by deleting the expression "internal and external" before the expression "circular cross sections".

234. Subheadings 7314.11 (including its immediately superior text reading "Woven products:") through 7314.50.00, inclusive, are superseded by the following:

	[Cloth...:]			
	"Woven cloth:			
7314.12	Endless bands for machinery, of stainless steel:			
7314.12.10	With meshes not finer than 12 wires to the lineal centimeter in warp or filling.....	3.9%	Free (A,B,E,IL, J,MX) 0.9% (CA)	35%
7314.12.20	With meshes finer than 12 but not finer than 36 wires to the lineal centimeter in warp or filling.....	3.9%	Free (A,B,E,IL, J,MX) 0.9% (CA)	50%

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234. (con.):

	[Cloth...:] [con.]			
	Woven cloth (con.):			
7314.12 (con.)	Endless bands for machinery, of stainless steel (con.):			
	With meshes finer than 36 wires to the lineal centimeter in warp or filling:			
	Fourdrinier wires, seamed or not seamed, suitable for use in papermaking machines:			
7314.12.30	With 94 or more wires to the lineal centimeter.....	Free		75%
7314.12.60	Other.....	8%	Free (A,E,IL,J, MX) 2% (CA)	75%
7314.12.90	Other.....	5.8%	Free (A,B,E,IL, J,MX) 1.4% (CA)	60%
7314.13.00	Other endless bands for machinery.....	3.9%	Free (A,B,E,IL, J) 0.9% (CA) 3.4% (MX)	60%
7314.14	Other woven cloth, of stainless steel:			
7314.14.10	With meshes not finer than 12 wires to the lineal centimeter in warp or filling.....	3.9%	Free (A,B,E,IL, J,MX) 0.9% (CA)	35%
7314.14.20	With meshes finer than 12 but not finer than 36 wires to the lineal centimeter in warp or filling.....	3.9%	Free (A,B,E,IL, J,MX) 0.9% (CA)	50%
	With meshes finer than 36 wires to the lineal centimeter in warp or filling:			
	Fourdrinier wires, seamed or not seamed, suitable for use in papermaking machines:			
7314.14.30	With 94 or more wires to the lineal centimeter.....	Free		75%
7314.14.60	Other.....	8%	Free (A,E,IL,J, MX) 2% (CA)	75%
7314.14.90	Other.....	5.8%	Free (A,B,E,IL, J,MX) 1.4% (CA)	60%
7314.19.00	Other.....	3.9%	Free (A,B,E,IL, J) 0.9% (CA) 3.4% (MX)	60%
7314.20.00	Grill, netting and fencing, welded at the intersection, of wire with a maximum cross-sectional dimension of 3 mm or more and having a mesh size of 100 cm^2 or more.....	4.6%	Free (A,E,IL,J, MX) 1.1% (CA)	45%

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234. (con.):

	[Cloth...:] [con.]			
	Other grill, netting and fencing, welded at the intersection:			
7314.31	Plated or coated with zinc:			
7314.31.10	Wire fencing coated or plated with zinc, whether or not covered with plastics material	0.2¢/kg	Free (CA,E,IL,J) 0.1¢/kg (MX)	1.1¢/kg
7314.31.50	Other	4.6%	Free (A,E,IL,J, MX) 1.1% (CA)	45%
7314.39.00	Other	4.6%	Free (A,E,IL,J, MX) 1.1% (CA)	45%
	Other cloth, grill, netting and fencing:			
7314.41.00	Plated or coated with zinc	0.2¢/kg	Free (CA,E,IL,J) 0.1¢/kg (MX)	1.1¢/kg
7314.42.00	Coated with plastics	0.2¢/kg	Free (CA,E,IL,J) 0.1¢/kg (MX)	1.1¢/kg
7314.49	Other:			
7314.49.30	Not cut to shape	4.6%	Free (A,E,IL,J, MX) 1.1% (CA)	45%
7314.49.60	Cut to shape	3.8%	Free (A,B,E,IL, J,MX) 0.9% (CA)	35%
7314.50.00	Expanded metal	3%	Free (A,CA,E,IL, J,MX)	45%"

235. Subheading 7414.10 is redesignated as subheading 7414.20, the article description "Endless bands, for machinery:" is deleted and "Cloth:" is inserted in lieu thereof, and subheadings 7414.10.30, 7414.10.60, and 7414.10.90 are redesignated as 7414.20.30, 7414.20.60, and 7414.20.90, respectively.

236. Subheadings 7418.10 through 7418.10.50 are superseded by the following:

	[Table,...:]			
	"Table, kitchen or other household articles and parts thereof; pot scourers and scouring or polishing pads, gloves and the like:			
7418.11	Pot scourers and scouring or polishing pads, gloves and the like:			
7418.11.20	Of copper-zinc base alloys (brass)	3.4%	Free (A,E,IL,J, MX) 0.7% (CA)	40%
7418.11.40	Other	4.1%	Free (A,E,IL,J, MX) 0.9% (CA)	40%
7418.19	Other:			
7418.19.10	Coated or plated with precious metals	3.6%	Free (A,E,IL,J, MX) 0.8% (CA)	50%

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236. (con.):

	[Table,...:] [con.] Table, kitchen or other household articles and parts thereof; pot scourers and scouring or polishing pads, gloves and the like (con.):			
7418.19 (con.)	Other (con.):			
	Other:			
7418.19.20	Of copper-zinc base alloys (brass).....	3.4%	Free (A,E,IL,J, MX) 0.7% (CA)	40%
7418.19.50	Other.....	4.1%	Free (A,E,IL,J, MX) 0.9% (CA)	40%"

237. The following new subheading note 2 to chapter 75 is added, and the title "Subheading Note" is modified to read "Subheading Notes":

"2. Notwithstanding the provisions of chapter note 1 (c), for the purposes of subheading 7508.10 the term "wire" applies only to products, whether or not in coils, of any cross-sectional shape, of which no cross-sectional dimension exceeds 6 mm."

238. Heading 7508.00 and subheadings 7508.00.10 and 7508.00.50 are superseded by the following:

"7508	Other articles of nickel:			
7508.10.00	Cloth, grill and netting, of nickel wire.....	4.5%	Free (A,B,E,IL, J,MX) 1.1% (CA)	45%
7508.90	Other:			
7508.90.10	Stranded wire.....	4%	Free (A,B,E,IL, J,MX) 0.9% (CA)	35%
7508.90.50	Other.....	4.5%	Free (A,B,E,IL, J,MX) 1.1% (CA)	45%"

239. The following new subheading note 2 to chapter 76 is added, and the title "Subheading Note" is modified to read "Subheading Notes":

"2. Notwithstanding the provisions of chapter note 1 (c), for the purposes of subheading 7616.91 the term "wire" applies only to products, whether or not in coils, of any cross-sectional shape, of which no cross-sectional dimension exceeds 6 mm."

240. Subheadings 7615.10 through 7615.10.90, inclusive, are superseded by the following:

	[Table,...:] "Table, kitchen or other household articles and parts thereof; pot scourers and scouring or polishing pads, gloves and the like:			
7615.11.00	Pot scourers and scouring or polishing pads, gloves and the like.....	3.5%	Free (A,E,IL,J, MX) 0.7% (CA)	45.5%

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240. (con.):

	[Table,...:] [con.] Table, kitchen or other household articles and parts thereof; pot scourers and scouring or polishing pads, gloves and the like (con.):			
7615.19	Other:			
	Cooking and kitchen ware:			
	Enameled or glazed or containing nonstick interior finishes:			
7615.19.10	Cast	3.6%	Free (A*,E,IL,J, MX) 0.7% (CA)	45.5%
7615.19.30	Other	4.7%	Free (A,E,IL,J, MX) 1.1% (CA)	45.5%
	Not enameled or glazed and not containing nonstick interior finishes:			
7615.19.50	Cast	3.6%	Free (A,E,IL,J, MX) 0.7% (CA)	45.5%
7615.19.70	Other	3.6%	Free (A,E,IL,J, MX) 0.8% (CA)	45.5%
7615.19.90	Other	3.5%	Free (A,E,IL,J, MX) 0.7% (CA)	45.5%"

Conforming change: General note 4(d) is modified by deleting "7615.10.10 Thailand" and by inserting in lieu thereof "7615.19.10 Thailand".

241. Subheading 7616.90 and subheadings 7616.90.10 and 7616.90.50 are superseded by the following:

	[Other:] "Other:			
7616.91.00	Cloth, grill, netting and fencing, of aluminum wire	4.4%	Free (A,B,E,IL, J,MX) 1.1% (CA)	45%
7616.99	Other:			
7616.99.10	Luggage frames	Free		45%
7616.99.50	Other	4.4%	Free (A,B,E,IL, J,MX) 1.1% (CA)	45%"

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242. Heading 7907 is redesignated as 7907.00, and subheadings 7907.10.00 through 7907.90.60 are superseded by the following:

	[Other...:]			
"7907.00.10	Articles of a type used for household, table or kitchen use; toilet and sanitary wares; all the foregoing and parts thereof of zinc...	3.2%	Free (A,E,IL,J, MX) 0.6% (CA)	40%
7907.00.60	Other.....	4.6%	Free (A,B,E,IL, J,MX) 1.1% (CA)	45%"

243. Heading 8005 is redesignated as 8005.00, and subheadings 8005.10.00 and 8005.20.00 are redesignated as 8005.00.10 and 8005.00.20, respectively.

244. Subheading 8202.32.00 is redesignated as 8202.39.00, and its article description is modified to read as follows:

"Other, including parts"

245(a). Subheadings 8207.11.00, 8207.12, 8207.12.30, and 8207.12.60 are redesignated as 8207.13.00, 8207.19, 8207.19.30, and 8207.19.60, respectively.

(b). The article description of subheading 8207.13.00 (as redesignated) is modified to read as follows:

"With working part of cermets"

(c). The article description of subheading 8207.19 is modified to read as follows:

"Other, including parts:"

246. The article description of heading 8209 is modified by deleting "sintered metal carbides or".

247(a). The article descriptions of subheadings 8211.91 and 8211.92 are each modified by deleting the expression ", and parts thereof".

(b). The article description of subheading 8211.91.60 is modified by deleting the expression "(including parts)"; such subheading is redesignated as 8211.91.80; and subheading 8211.92.80 is redesignated as 8211.92.90.

(c). The article description of subheading 8211.93.00 is modified by deleting the expression ", and parts thereof (except blades)".

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247. (con.)

(d). The following new subheadings are inserted in numerical sequence:

	[Knives...:]			
	[Other:]			
"8211.95	Handles of base metal:			
8211.95.10	For table knives having fixed blades.....	0.4¢ each + 5.6%	Free (A,E,IL, J,MX) 1.2% (CA)	8¢ each + 45%
8211.95.50	For other knives having fixed blades.....	0.4¢ each + 6.1%	Free (A,E,IL, J,MX) 1.2% (CA)	8¢ each + 45%
8211.95.90	Other.....	3¢ each + 5.4%	Free (A,E,IL, J,MX) 0.5¢ each + 0.9% (CA)	35¢ each + 55%"

248. Subdivision (o) of note 1 to section XVI is modified by deleting the expression "Interchangeable tools of heading 8207 or brushes of a kind used as parts of machines of heading 9603;" and by inserting in lieu thereof the following:

"Interchangeable tools of heading 8207 or brushes of a kind used as parts of machines (heading 9603);"

249(a). Subdivision (a) of note 2 to section XVI is modified by deleting the expression "(other than headings 8485 and 8548)" and inserting the expression "(other than headings 8409, 8431, 8448, 8466, 8473, 8485, 8503, 8522, 8529, 8538 and 8548)" in lieu thereof.

(b). Subdivision (b) of note 2 to section XVI is modified by deleting the expression "of that kind" and inserting the expression "of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate".

(c). Subdivision (c) of note 2 to section XVI is modified to read as follows:

"(c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8485 or 8548."

250. Subdivision (b) of note 1 to chapter 84 is modified to read as follows:

"(b) Machinery or appliances (for example, pumps) of ceramic material and ceramic parts of machinery or appliances of any material (chapter 69);"

251. The following new last paragraph of note 2 to chapter 84 is inserted:

"Heading 8424 does not cover:

Ink-jet printing machines (heading 8443 or 8471)."

252. Note 4 to chapter 84 is modified to read as follows:

"4. Heading 8457 applies only to machine tools for working metal, other than lathes (including turning centers), which can carry out different types of machining operations either:

(a) by automatic tool change from a magazine or the like in conformity with a machining program (machining centers),

(b) by the automatic use, simultaneously or sequentially, of different unit heads working on a fixed position workpiece (unit construction machines, single station), or

(c) by the automatic transfer of the workpiece to different unit heads (multi-station transfer machines)."

253. Subdivision (B) and the final paragraph of note 5 to chapter 84 are modified to read as follows:

"(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:

(a) It is of a kind solely or principally used in an automatic data processing system;

(b) It is connectable to the central processing unit either directly or through one or more other units; and

(c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

(C) Separately presented units of an automatic data processing machine are to be classified in heading 8471.

(D) Printers, keyboards, X-Y coordinate input devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of heading 8471.

(E) Machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data processing machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings."

254. The following new note 8 to chapter 84 is inserted in numerical sequence:

"8. For the purposes of heading 8470, the term "pocket-size" applies only to machines the dimensions of which do not exceed 170 mm x 100 mm x 45 mm."

255. Subheading note 1 to chapter 84 is redesignated as subheading note 2, the existing title thereto is modified to read "Subheading Notes", and the following new subheading note 1 is inserted thereafter:

"1. For the purposes of subheading 8471.49, the term "systems" means automatic data processing machines whose units satisfy the conditions laid down in note 5(B) to chapter 84 and which comprise at least a central processing unit, one input unit (for example, a keyboard or a scanner), and one output unit (for example, a visual display unit or a printer)."

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256. Subheadings 8406.11 (and the superior text thereto reading "Turbines:"), 8406.11.10, 8406.11.90, 8406.19, 8406.19.10 and 8406.19.90 are superseded by the following:

	[Steam...:]			
"8406.10	Turbines for marine propulsion:			
8406.10.10	Steam turbines.....	7.3%	Free (A,CA,E,IL, J,MX)	20%
8406.10.90	Other.....	2.7%	Free (A,CA,E,IL, J,MX)	27.5%
	Other turbines:			
8406.81	Of an output exceeding 40 MW:			
8406.81.10	Steam turbines.....	7.3%	Free (A,CA,E,IL, J,MX)	20%
8406.81.90	Other.....	2.7%	Free (A,CA,E,IL, J,MX)	27.5%
8406.82	Of an output not exceeding 40 MW:			
8406.82.10	Steam turbines.....	7.3%	Free (A,CA,E,IL, J,MX)	20%
8406.82.90	Other.....	2.7%	Free (A,CA,E,IL, J,MX)	27.5%"

257. The following new subheading 8415.20.00 is inserted in numerical sequence:

	[Air...:]			
"8415.20.00	Of a kind used for persons, in motor vehicles.....	1.9%	Free (A,B,CA,E, IL,J,MX)	35%"

258. The article description of heading 8422 is modified to read as follows:

"Dishwashing machines; machinery for cleaning or drying bottles or other containers; machinery for filling, closing, sealing or labeling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; other packing or wrapping machinery (including heat-shrink wrapping machinery); machinery for aerating beverages; parts thereof:"

259. The article description of subheading 8422.30 is modified to read as follows:

"Machinery for filling, closing, sealing or labeling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; machinery for aerating beverages:"

260. The article description of subheading 8422.40 is modified to read as follows:

"Other packing or wrapping machinery (including heat-shrink wrapping machinery):"

261(a). The article description of heading 8443 is modified to read as follows:

"Printing machinery, including ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof:"

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261. (con.)

(b). Subheadings 8443.50, 8443.50.10 and 8443.50.50 are superseded by the following:

	[Printing...:]			
	"Other printing machinery:			
8443.51	Ink-jet printing machinery:			
8443.51.10	Textile printing machinery.....	4.1%	Free (A,CA,E,IL, J,MX)	40%
8443.51.50	Other.....	2%	Free (A,CA,E,IL, J,MX)	25%
8443.59	Other:			
8443.59.10	Textile printing machinery.....	4.1%	Free (A,CA,E,IL, J,MX)	40%
8443.59.50	Other.....	2%	Free (A,CA,E,IL, J,MX)	25%"

262. Subheadings 8456.90 through 8456.90.80 are superseded by the following:

	[Machine...:]			
	"Other:			
8456.91.00	For dry etching patterns on semiconductor materials.....	Free		35%
8456.99	Other:			
	For working metal:			
8456.99.10	Focused ion beam milling machines designed to produce or repair masks and reticles of semiconductor device designs.....	Free		30%
8456.99.30	Other.....	4%	Free (A,CA,E,IL, J,MX)	30%
8456.99.50	Other.....	2.7%	Free (A,CA,E,IL, J,MX)	35%"

263. The article description of heading 8458 is modified by inserting the expression "(including turning centers)" after the word "Lathes".

264. The article description of heading 8459 is modified by inserting the expression "(including turning centers)" after the word "lathes".

265. The article description of heading 8460 is modified by deleting the expression ", sintered metal carbides".

266. The article description of heading 8461 is modified by deleting the expression ", sintered metal carbides".

267. The article description of heading 8463 is modified by deleting the expression ", sintered metal carbides".

268. The article description of heading 8467 is modified by inserting the word ", hydraulic" after the word "pneumatic".

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269(a). The article description of heading 8469 is modified to read as follows:

"Typewriters other than printers of heading 8471; word processing machines:"

(b). Subheadings 8469.10 through 8469.39.00 are superseded by the following:

	[Typewriters...:]			
	"Automatic typewriters and word processing machines:			
8469.11.00	Word processing machines.....	1.3%	Free (A,CA,E,IL, J,MX)	35%
8469.12.00	Automatic typewriters.....	1.3%	Free (A*,CA,E,IL, J,MX)	35%
8469.20.00	Other typewriters, electric.....	Free		Free
8469.30.00	Other typewriters, nonelectric.....	Free		Free"

Conforming change: General note 4(d) is modified by deleting "8469.10.80 Indonesia" and by inserting in lieu thereof "8469.12.00 Indonesia".

270(a). The article description of heading 8470 is modified to read as follows:

"Calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers:"

(b). The article description of subheading 8470.10.00 is modified by deleting the expression "external source of power" and inserting the expression "external source of electric power and pocket-size data recording, reproducing and displaying machines with calculating functions" in lieu thereof.

271. Subheadings 8471.20.00 through 8471.99.90 are superseded by the following:

	[Automatic...:]			
"8471.30.00	Portable digital automatic data processing machines, weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display.....	3.1%	Free (A,C,CA,E, IL,J,MX)	35%
	Other digital automatic data processing machines:			
8471.41.00	Comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined.....	3.1%	Free (A,C,CA,E, IL,J,MX)	35%
8471.49	Other, entered in the form of systems:			
8471.49.10	Digital processing units entered with the rest of a system, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units....	3.1%	Free (A,C,CA,E, IL,J,MX)	35%
	Input or output units, entered with the rest of a system, whether or not containing storage units in the same housing:			
8471.49.15	Combined input/output units....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%

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271. (con.):

	[Automatic...:] [con.]			
	Other digital automatic data processing machines (con.):			
8471.49 (con.)	Other, entered in the form of systems (con.):			
	Input or output units, entered with the rest of a system, whether or not containing storage units in the same housing (con.):			
	Other:			
8471.49.21	Keyboards.....	Free		35%
	Display units:			
8471.49.24	Without cathode-ray tube (CRT), having a visual display diagonal not exceeding 30.5 cm....	Free		35%
	Other:			
8471.49.26	With color cathode-ray tube (CRT).....	2.2%	Free (A*,C,CA,E, IL,J,MX)	35%
8471.49.29	Other.....	2.2%	Free (A*,C,CA,E, IL,J,MX)	35%
	Printer units:			
	Laser:			
8471.49.31	Capable of producing more than 20 pages per minute.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.49.32	Other.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.49.33	Light bar electronic type.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.49.34	Ink jet.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.49.35	Thermal transfer.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.49.36	Ionographic.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.49.37	Other.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
	Other:			
8471.49.42	Optical scanners and magnetic ink recognition devices.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.49.48	Other.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%

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271. (con.):

	[Automatic...:] [con.]			
	Other digital automatic data processing machines (con.):			
8471.49 (con.)	Other, entered in the form of systems (con.):			
8471.49.50	Storage units, entered with the rest of a system.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
	Other:			
8471.49.60	Control or adapter units.....	Free		35%
8471.49.70	Power supplies.....	1.8%	Free (A,CA,E, IL,J,MX)	35%
	Other:			
8471.49.85	Units suitable for physical incorporation into automatic data processing machines or units thereof.....	Free		35%
8471.49.95	Other.....	2.2%	Free (A,CA,E, IL,J,MX)	35%
8471.50	Digital processing units other than those of subheadings 8471.41 and 8741.49, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units:			
8471.50.40	Digital processing units for automatic data processing machines, unhoused, consisting of a printed circuit (single or multiple) with one or more electronic integrated circuits or other semiconductor devices mounted directly thereon, certified as units designed for use other than in automatic data processing machines of subheading 8471.30 or 8471.41.....	Free		35%
8471.50.80	Other.....	3.1%	Free (A,C,CA,E, IL,J,MX)	35%
8471.60	Input or output units, whether or not containing storage units in the same housing:			
8471.60.10	Combined input/output units.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
	Other:			
8471.60.20	Keyboards.....	Free		35%
	Display units:			
8471.60.30	Without cathode-ray tube (CRT), having a visual display diagonal not exceeding 30.5 cm.....	Free		35%
	Other:			
8471.60.35	With color cathode-ray tube (CRT).....	2.2%	Free (A*,C,CA,E, IL,J,MX)	35%
8471.60.45	Other.....	2.2%	Free (A*,C,CA,E, IL,J,MX)	35%

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271. (con.):

	[Automatic...:] [con.]			
8471.60 (con.)	Input or output units, whether or not containing storage units in the same housing (con.):			
	Other (con.):			
	Printer units:			
	Assembled units incorporating at least the media transport, control and print mechanisms:			
	Laser:			
8471.60.51	Capable of producing more than 20 pages per minute.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.60.52	Other.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.60.53	Light bar electronic type.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.60.54	Ink jet.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.60.55	Thermal transfer.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.60.56	Ionographic.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.60.57	Other.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
	Other:			
	Laser:			
8471.60.61	Capable of producing more than 20 pages per minute.....	Free		35%
8471.60.62	Other.....	Free		35%
8471.60.63	Light bar electronic type.....	Free		35%
8471.60.64	Ink jet.....	Free		35%
8471.60.65	Thermal transfer.....	Free		35%
8471.60.66	Ionographic.....	Free		35%
8471.60.67	Other.....	Free		35%
	Other:			
8471.60.70	Units suitable for physical incorporation into automatic data processing machines or units thereof.....	Free		35%
	Other:			
8471.60.80	Optical scanners and magnetic ink recognition devices.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.60.90	Other.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%

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271. (con.):

	[Automatic...:] [con.]			
8471.70	Storage units:			
	Magnetic disk drive units:			
	For a disk of a diameter exceeding 21 cm:			
8471.70.10	Without read-write unit assembled therein; read-write units entered separately.....	Free		35%
8471.70.20	Units for physical incorporation into automatic data processing machines or units thereof.....	Free		35%
8471.70.30	Other.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
	Other:			
8471.70.40	Not assembled in cabinets, and without attached external power supply.....	Free		35%
8471.70.50	Other.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
	Other storage units:			
8471.70.60	Not assembled in cabinets for placing on a table, desk, wall, floor or similar place.....	Free		35%
8471.70.90	Other.....	2.2%	Free (A,C,CA,E, IL,J,MX)	35%
8471.80	Other units of automatic data processing machines:			
8471.80.10	Control or adapter units.....	Free		35%
	Other:			
8471.80.40	Units suitable for physical incorporation into automatic data processing machines.....	Free		35%
8471.80.90	Other.....	2.2%	Free (A,CA,E, IL,J,MX)	35%
8471.90.00	Other.....	2.2%	Free (A,CA,E, IL,J,MX)	35%"

Conforming changes: General note 4(d) is modified by deleting "8471.92.32 Malaysia; Thailand" and "8471.92.34 Malaysia; Thailand" and by inserting in lieu thereof "8471.49.26 Malaysia; Thailand", "8471.49.29 Malaysia; Thailand", "8471.60.35 Malaysia; Thailand" and "8471.60.45 Malaysia; Thailand".

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272. The following new provisions are inserted after subheading 8473.40.90:

	[Parts...:]			
"8473.50	Parts and accessories equally suitable for use with machines of two or more of the headings 8469 to 8472:			
8473.50.30	Printed circuit assemblies.....	Free		35%
8473.50.60	Parts and accessories, including face plates and lock latches, of printed circuit assemblies.....	Free		35%
8473.50.90	Other.....	Free		35%"

Conforming changes:

(a). Subheading 8473.30.10 is modified by deleting ", other than for power supplies for automatic data processing machines".

(b). Subheadings 8473.30.35, 8473.30.45 and 8473.30.50 and the superior texts reading "Other:" and "Parts of power supplies for automatic data processing machines:" are deleted and the following new provision is inserted in lieu thereof:

	[Parts...:]			
	[Parts...:]			
	[Not...:]			
"8473.30.50	Other.....	Free		35%"

273. Subheading 8475.20.00 is superseded by the following:

	[Machines...:]			
	"Machines for manufacturing or hot-working glass or glassware:			
8475.21.00	Machines for making optical fibers and preforms thereof.....	2.3%	Free (A,CA,E, IL,J,MX)	35%
8475.29.00	Other.....	2.3%	Free (A,CA,E, IL,J,MX)	35%"

274. Subheadings 8476.11.00 and 8476.19.00 (and the superior text thereto reading "Machines:") are superseded by the following:

	[Automatic...:]			
	"Automatic beverage-vending machines:			
8476.21.00	Incorporating heating or refrigerating devices.....	2.3%	Free (A,CA,E,IL, J,MX)	35%
8476.29.00	Other.....	2.3%	Free (A,CA,E,IL, J,MX)	35%
	Other machines:			
8476.81.00	Incorporating heating or refrigerating devices.....	2.3%	Free (A,CA,E,IL, J,MX)	35%
8476.89.00	Other.....	2.3%	Free (A,CA,E,IL, J,MX)	35%"

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275. The following new subheadings are inserted in numerical sequence in heading 8479:

	[Machines...:]				
"8479.50.00	Industrial robots, not elsewhere specified or included.....	3.2%		Free (A,CA,E, IL,J,MX)	35%
8479.60.00	Evaporative air coolers.....	3.6%		Free (A,CA,E, IL,J,MX)	40%"

276(a). The article description of heading 8483 is modified by deleting the expression "ball screws;" and inserting the expression "ball or roller screws;" in lieu thereof.

(b). The article description of subheading 8483.40 is modified by deleting the expression "ball screws;" and inserting the expression "ball or roller screws;" in lieu thereof.

(c). The article description of subheading 8483.40.80 is modified to read as follows: "Ball or roller screws".

277(a). The article description of heading 8484 is modified by inserting the expression "; mechanical seals" after the expression "similar packings".

(b). The following new subheading is inserted in numerical sequence in heading 8484:

	[Gaskets...]				
"8484.20.00	Mechanical seals.....	5%		Free (A,B,CA,E, IL,J,MX)	45%"

278. The first sentence of the second paragraph of note 4 to chapter 85 is modified to read as follows:

"The term "printed circuits" does not cover circuits combined with elements other than those obtained during the printing process, nor does it cover individual, discrete resistors, capacitors or inductances."

279. The following new note 7 to chapter 85 is inserted:

"7. For the purposes of heading 8548, "spent primary cells, spent primary batteries and spent electric storage batteries" are those which are neither usable as such because of breakage, cutting up, wear or other reasons, nor capable of being recharged."

280. The following new subheading note 1 to chapter 85 is inserted:

"Subheading Note

1. Subheadings 8519.92 and 8527.12 cover only cassette players with built-in amplifier, without built-in loudspeaker, capable of operating without an external source of electric power and the dimensions of which do not exceed 170 mm x 100 mm x 45 mm."

281. Subheading 8502.30.00 is superseded by the following:

	[Electric...:]				
	"Other generating sets:				
8502.31.00	Wind-powered.....	2.8%		Free (A,B,C,CA, E,IL,J,MX)	35%
8502.39.00	Other.....	2.8%		Free (A,B,C,CA, E,IL,J,MX)	35%"

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282(a). The article description of heading 8504 is modified to read as follows:

"Electrical transformers, static converters (for example, rectifiers) and inductors; power supplies for automatic data processing machines or units thereof of heading 8471; parts thereof:"

(b). The article description of subheading 8504.40 is modified to read as follows:

"Static converters; power supplies for automatic data processing machines or units thereof of heading 8471:"

(c). Subheading 8504.40.80 is deleted and the following new subheadings are added in numerical sequence:

	[Electrical...:] [Static...:] "Power supplies for automatic data processing machines or units thereof of heading 8471:			
8504.40.60	Suitable for physical incorporation into automatic data processing machines or units thereof of heading 8471.....	Free		35%
8504.40.70	Other.....	1.8%	Free (A,CA,E, IL,J,MX)	35%
8504.40.90	Other.....	2.4%	Free (A,B,C,CA, E,IL,J,MX)	35%"

(d). Subheadings 8504.90.60 and 8504.90.90 are superseded by the following:

	[Electrical...:] [Parts:] "Of power supplies for automatic data processing machines or units thereof of heading 8471:			
8504.90.20	Printed circuit assemblies.....	Free		35%
8504.90.40	Other.....	Free		35%
	Other:			
8504.90.70	Printed circuit assemblies.....	2.9%	Free (A,B,CA,E, IL,J,MX)	35%
8504.90.95	Other.....	2.9%	Free (A,B,CA,E, IL,J,MX)	35%"

283. Heading 8506 (including its subordinate provisions) is superseded by the following:

"8506	Primary cells and primary batteries; parts thereof:			
8506.10.00	Manganese dioxide.....	4.3%	Free (A,E,IL,J, MX) 1% (CA)	35%
8506.30	Mercuric oxide:			
8506.30.10	Having an external volume not exceeding 300 cm^3.....	4.3%	Free (A,CA,E, IL,J,MX)	35%
8506.30.50	Other.....	4.3%	Free (A,E,IL,J, MX) 1% (CA)	35%

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283. (con.):

8506 (con.)	Primary cells and primary batteries; parts thereof (con.):				
8506.40	Silver oxide:				
8506.40.10	Having an external volume not exceeding 300 cm^3	4.3%	Free (A,CA,E, IL,J,MX)	35%	
8506.40.50	Other	4.3%	Free (A,E,IL,J, MX) 1% (CA)	35%	
8506.50.00	Lithium	4.3%	Free (A,E,IL,J, MX) 1% (CA)	35%	
8506.60.00	Air-zinc	4.3%	Free (A,E,IL,J, MX) 1% (CA)	35%	
8506.80.00	Other	4.3%	Free (A,E,IL,J, MX) 1% (CA)	35%	
8506.90.00	Parts	4.3%	Free (A,E,IL,J, MX) 1% (CA)	35%"	

284(a). The article description of heading 8510 is modified to read as follows:

"Shavers, hair clippers and hair-removing appliances, with self-contained electric motor; parts thereof:"

(b). The following new subheadings 8510.30.00 and 8510.90.55 are inserted in numerical sequence:

	[Shavers,...:]				
"8510.30.00	Hair-removing appliances	4.2%	Free (A,E,IL,J, MX) 0.8% (CA)	40%"	
	[Parts:]				
"8510.90.55	Other	4.2%	Free (A,CA,E,IL, J,MX)	40%"	

285. The article description of heading 8515 is modified by deleting the expression "sintered metal carbides" and inserting the word "cermets" in lieu thereof.

286(a). The article description of heading 8517 is modified to read as follows:

"Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones; parts thereof:"

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286. (con.)

(b). Subheading 8517.10.00 is superseded by the following:

	[Electrical...:]			
	"Telephone sets; videophones:			
8517.11.00	Line telephone sets with cordless handsets	3.6%	Free (A,B,C,CA,E, IL,J,MX)	35%
8517.19	Other:			
8517.19.40	Videophones	8.5%	Free (A*,B,CA,E, IL,J,MX)	35%
8517.19.80	Other	8.5%	Free (A*,B,CA,E, IL,J,MX)	35%"

Conforming change: General note 4(d) is modified by deleting "8517.10.00 Thailand" and by inserting in lieu thereof "8517.19.40 Thailand" and "8517.19.80 Thailand".

(c). Subheading 8517.20.00 is superseded by the following:

	[Electrical...:]			
	"Facsimile machines and teleprinters:			
8517.21.00	Facsimile machines	4.7%	Free (A*,CA,E, IL,J,MX)	35%
8517.22.00	Teleprinters	4.7%	Free (A,CA,E, IL,J,MX)	35%"

Conforming change: General note 4(d) is modified by deleting "8517.82.40 Thailand" and by inserting in numerical sequence "8517.21.00 Thailand".

(d). Subheadings 8517.40, 8517.40.10, and 8517.40.50 are redesignated as 8517.50, 8517.50.10, and 8517.50.50, respectively; the article description of subheading 8517.50 (as redesignated) is modified by deleting the expression "systems:" and inserting the expression "systems or for digital line systems:" in lieu thereof.

(e). Subheading 8517.40.70 is deleted and the following new provisions are inserted in numerical sequence in lieu thereof:

	[Electrical...:]			
	[Other...:]			
	[Other:]			
	"Telegraphic:			
8517.50.60	For carrier-current line systems	3.7%	Free (A,CA,E,IL, J,MX)	35%
8517.50.90	Other	4.7%	Free (A,CA,E,IL, J,MX)	35%"

(f). Subheadings 8517.81.00 (and the superior text thereto reading "Other apparatus:"), 8517.82, 8517.82.40 and 8517.82.80 are deleted and the following new provisions are inserted in lieu thereof:

	[Electrical...:]			
"8517.80	Other apparatus:			
8517.80.10	Telephonic	8.5%	Free (A,B,CA,E, IL,J,MX)	35%
8517.80.20	Telegraphic	4.7%	Free (A,CA,E, IL,J,MX)	35%"

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286. (con.)

(g). The superior text immediately preceding subheading 8517.90.16 reading "Parts for articles of subheadings 8517.20, 8517.30, 8517.40.50 and 8517.81:" is modified by deleting provisions "8517.20," and "8517.40.50 and 8517.81" and inserting provisions "8517.22," and "8517.50.50 and 8517.80.10", respectively, in lieu thereof.

287. Subheading 8519.91 is superseded by the following:

	[Turntables,...:]			
	[Other...:]			
"8519.92.00	Pocket-size cassette players.....	2.2%	Free (A,E,IL, J,MX) 0.7% (CA)	35%
8519.93	Other, cassette type:			
8519.93.40	Designed exclusively for motor-vehicle installation.....	3.7%	Free (A,B,CA,E, IL,J,MX)	35%
8519.93.80	Other.....	2.2%	Free (A,E,IL,J, MX) 0.7% (CA)	35%"

288. Subheading 8520.31.00 is superseded by the following:

	[Magnetic...:]			
	[Other...:]			
"8520.32.00	Digital audio type.....	2.3%	Free (A,B,E,IL, J,MX) 0.7% (CA)	35%
8520.33.00	Other, cassette type.....	2.3%	Free (A,B,E,IL, J,MX) 0.7% (CA)	35%"

289. The article description of heading 8522 is modified to read as follows:

"Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521:"

290. The following new subheading 8523.30.00 is inserted in numerical order:

	[Prepared...:]			
"8523.30.00	Cards incorporating a magnetic stripe.....	2.5%	Free (A,E,IL,J, MX) 0.8% (CA)	80%"

291. Subheadings 8524.10.00 through 8524.90.40 are superseded by the following:

	[Records,...:]			
"8524.10.00	Phonograph records.....	2.9%	Free (A,E,IL,J, MX) 0.7% (CA)	30%
	Discs for laser reading systems:			
8524.31.00	For reproducing phenomena other than sound or image.....	5.8¢/m^2 of recording surface	Free (A,E,IL, J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface

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291. (con.):

	[Records,...:] [con.]			
	Discs for laser reading systems (con.):			
8524.32.00	For reproducing sound only.....	5.8¢/m^2 of recording surface	Free (A,E,IL, J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface
8524.39.00	Other.....	4.3%	Free (A,E,IL, J,MX) 1% (CA)	80%
8524.40.00	Magnetic tapes for reproducing phenomena other than sound or image.....	7.7¢/m^2 of recording surface	Free (A,E,IL, J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface
	Other magnetic tapes:			
8524.51	Of a width not exceeding 4 mm:			
8524.51.10	News sound recordings relating to current events.....	Free		Free
8524.51.30	Other.....	7.7¢/m^2 of recording surface	Free (A,E,IL, J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface
8524.52	Of a width exceeding 4 mm but not exceeding 6.5 mm:			
8524.52.10	Video tape recordings.....	0.53¢/lin. m	Free (A,E,IL, J,MX) 0.1¢/lin. m (CA)	3.3¢/lin. m
8524.52.20	Other.....	7.7¢/m^2 of recording surface	Free (A,E,IL, J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface
8524.53	Of a width exceeding 6.5 mm:			
8524.53.10	Video tape recordings.....	0.4¢/lin. m	Free (A,E,IL, J,MX) 0.1¢/lin. m (CA)	3.3¢/lin. m
8524.53.20	Other.....	7.7¢/m^2 of recording surface	Free (A,E,IL, J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface
8524.60.00	Cards incorporating a magnetic stripe.....	5.8¢/m^2 of recording surface	Free (A,E,IL, J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface

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291. (con.):

	[Records,...:] [con.]			
	Other:			
8524.91.00	For reproducing phenomena other than sound or image.....	5.8¢/m^2 of recording surface	Free (A,E,IL, J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface
8524.99	Other:			
8524.99.20	Master records or metal matrices therefrom for use in the production of sound records for export; recordings on wire.....	Free		Free
8524.99.40	Other.....	5.8¢/m^2 of recording surface	Free (A,E,IL, J,MX) 1.9¢/m^2 of recording surface (CA)	86.1¢/m^2 of recording surface"

292(a). The article description of heading 8525 is modified by deleting the expression "cameras:" and inserting the following in lieu thereof:

"cameras; still image video cameras or other video camera recorders:"

(b). Subheadings 8525.20.50 and 8525.20.60 (and the superior text thereto reading "Other:") are deleted, and the following new subheading is inserted in lieu thereof:

	[Transmission...:]			
	[Transmission...:]			
"8525.20.90	Other.....	3.6%	Free (A,B,C,CA, E,IL,J,MX)	35%"

(c). The following new subheading is inserted in numerical sequence:

	[Transmission...:]			
"8525.40.00	Still image video cameras and other video camera recorders.....	3.4%	Free (A,CA,E, IL,J,MX)	35%"

293. Subheadings 8527.11 through 8527.11.60 and the intervening superior text reading "Other:" are superseded by the following:

	[Reception...:]			
	[Radiobroadcast...:]			
"8527.12.00	Pocket-size radio cassette players.....	2.2%	Free (A,CA,E, IL,J,MX)	35%
8527.13	Other apparatus combined with sound recording or reproducing apparatus:			
8527.13.11	Combinations incorporating tape players which are incapable of recording.....	2.2%	Free (A,CA,E, IL,J,MX)	35%

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293. (con.):

	[Reception...:] [con.]			
	[Radiobroadcast...:] [con.]			
8527.13 (con.)	Other apparatus combined with sound recording or reproducing apparatus (con.):			
	Other:			
8527.13.20	Radio-tape recorder combinations	2.9%	Free (CA,E,IL, J,MX)	35%
8527.13.40	Radio-phonograph combinations	2.6%	Free (CA,E,IL, J,MX)	35%
8527.13.60	Other	2.2%	Free (A,CA,E, IL,J,MX)	35%"

294(a). The article description of heading 8528 is modified to read as follows:

"Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors:"

(b). Subheadings 8528.10 through 8528.20.00, inclusive, are superseded by the following:

	[Reception...:]			
	"Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus:			
8528.12	Color:			
	Incomplete or unfinished (including assemblies for television receivers consisting of all the parts specified in additional U.S. note 10 to this chapter plus a power supply), not incorporating a cathode-ray tube, flat panel screen or similar display device:			
8528.12.04	Incorporating video recording or reproducing apparatus	2.3%	Free (A*,E,IL,J, MX) 0.7% (CA)	25%
8528.12.08	Other	3%	Free (B,E,IL,J, MX) 1% (CA)	35%
	Non-high definition, having a single picture tube intended for direct viewing (non-projection type), with a video display diagonal not exceeding 35.56 cm:			
	Incorporating video recording or reproducing apparatus:			
8528.12.12	With a video display diagonal not exceeding 33.02 cm	2.3%	Free (A*,E,IL,J, MX) 0.7% (CA)	25%
8528.12.16	Other	3.9%	Free (A*,E,IL,J, MX) 0.7% (CA)	25%

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294. (con.)
(b). (con.):

	[Reception...:] [con.]			
	Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus (con.):			
8528.12 (con.)	Color (con.):			
	Non-high definition, having a single picture tube intended for direct viewing (non-projection type), with a video display diagonal not exceeding 35.56 cm (con.):			
	Other:			
8528.12.20	With a video display diagonal not exceeding 33.02 cm.....	3%	Free (B,E,IL,J, MX) 1% (CA)	35%
8528.12.24	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	Non-high definition, having a single picture tube intended for direct viewing (non-projection type), with a video display diagonal exceeding 35.56 cm:			
8528.12.28	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
8528.12.32	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	Non-high definition, projection type, with a cathode-ray tube:			
8528.12.36	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A*,E,IL,J, MX) 0.7% (CA)	25%
8528.12.40	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	High definition, non-projection type, with a cathode-ray tube:			
8528.12.44	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
8528.12.48	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%

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294. (con.)
(b). (con.):

	[Reception...:] [con.] Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus (con.):			
8528.12 (con.)	Color (con.):			
	High definition, projection type, with a cathode-ray tube:			
8528.12.52	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
8528.12.56	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	With a flat panel screen: Incorporating video recording or reproducing apparatus:			
8528.12.62	With a video display diagonal not exceeding 33.02 cm.....	2.3%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
8528.12.64	Other.....	3.9%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
	Other:			
8528.12.68	With a video display diagonal not exceeding 33.02 cm.....	3%	Free (B,E,IL,J, MX) 1% (CA)	35%
8528.12.72	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	Other: Incorporating video recording or reproducing apparatus:			
8528.12.76	With a video display diagonal not exceeding 33.02 cm.....	2.3%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
8528.12.80	Other.....	3.9%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
	Other:			
8528.12.84	With a video display diagonal not exceeding 33.02 cm.....	3%	Free (B,E,IL,J, MX) 1% (CA)	35%
8528.12.88	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%

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294. (con.)
(b). (con.):

	[Reception...:] [con.]			
	Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus (con.):			
8528.13.00	Black and white or other monochrome.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	Video monitors:			
8528.21	Color:			
	Incomplete or unfinished (including assemblies consisting of the parts specified in subdivisions (a), (b), (c) and (e) in additional U.S. note 10 to this chapter plus a power supply), not incorporating a cathode-ray tube, flat panel screen or similar display device:			
8528.21.05	Incorporating video recording or reproducing apparatus.....	2.3%	Free (A*,E,IL,J, MX) 0.7% (CA)	25%
8528.21.10	Other.....	3%	Free (B,E,IL,J, MX) 1% (CA)	35%
	Non-high definition, having a single picture tube intended for direct viewing (non-projection type), with a video display diagonal not exceeding 35.56 cm:			
	Incorporating video recording or reproducing apparatus:			
8528.21.16	With a video display diagonal not exceeding 33.02 cm.....	2.3%	Free (A*,E,IL, J,MX) 0.7% (CA)	25%
8528.21.19	Other.....	3.9%	Free (A*,E,IL, J,MX) 0.7% (CA)	25%
	Other:			
8528.21.24	With a video display diagonal not exceeding 33.02 cm.....	3%	Free (B,E,IL, J,MX) 1% (CA)	35%
8528.21.29	Other.....	5%	Free (B,E,IL, J,MX) 1% (CA)	35%

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294. (con.)
(b). (con.):

	[Reception...:] [con.] Video monitors (con.): Color (con.):			
8528.21 (con.)	Non-high definition, having a single picture tube intended for direct viewing (non-projection type), with a video display diagonal exceeding 35.56 cm:			
8528.21.34	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A,E,IL, J,MX) 0.7% (CA)	25%
8528.21.39	Other.....	5%	Free (B,E,IL, J,MX) 1% (CA)	35%
	Non-high definition, projection type, with a cathode-ray tube:			
8528.21.41	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A*,E,IL, J,MX) 0.7% (CA)	25%
8528.21.42	Other.....	5%	Free (B,E,IL, J,MX) 1% (CA)	35%
	High definition, non-projection type, with a cathode-ray tube:			
8528.21.44	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A,E,IL, J,MX) 0.7% (CA)	25%
8528.21.49	Other.....	5%	Free (B,E,IL, J,MX) 1% (CA)	35%
	High definition, projection type, with a cathode-ray tube:			
8528.21.51	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A,E,IL, J,MX) 0.7% (CA)	25%
8528.21.52	Other.....	5%	Free (B,E,IL, J,MX) 1% (CA)	35%
	With a flat panel screen: Incorporating video recording or reproducing apparatus:			
8528.21.55	With a video display diagonal not exceeding 33.02 cm.....	2.3%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
8528.21.60	Other.....	3.9%	Free (A,E,IL,J, MX) 0.7% (CA)	25%

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294. (con.)
(b). (con.):

	[Reception...:] [con.]			
	Video monitors (con.):			
8528.21 (con.)	Color (con.):			
	With a flat panel screen (con.):			
	Other:			
8528.21.65	With a video display diagonal not exceeding 33.02 cm.....	3%	Free (B,E,IL,J, MX) 1% (CA)	35%
8528.21.70	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	Other:			
	Incorporating video recording or reproducing apparatus:			
8528.21.75	With a video display diagonal not exceeding 33.02 cm.....	2.3%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
8528.21.80	Other.....	3.9%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
	Other:			
8528.21.85	With a video display diagonal not exceeding 33.02 cm.....	3%	Free (B,E,IL,J, MX) 1% (CA)	35%
8528.21.90	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
8528.22.00	Black and white or other monochrome.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
8528.30	Video projectors:			
	Color:			
	Incomplete or unfinished (including assemblies consisting of the parts specified in subdivisions (a), (b), (c) and (e) in additional U.S. note 10 to this chapter plus a power supply), not incorporating a cathode-ray tube, flat panel screen or similar display device:			
8528.30.10	Incorporating video recording or reproducing apparatus.....	2.3%	Free (A*,E,IL,J, MX) 0.7% (CA)	25%
8528.30.20	Other.....	3%	Free (B,E,IL,J, MX) 1% (CA)	35%

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294. (con.)
(b). (con.):

	[Reception...:] [con.]			
8528.30 (con.)	Video projectors (con.):			
	Color (con.):			
	Non-high definition, with a cathode-ray tube:			
8528.30.30	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A*,E,IL,J, MX) 0.7% (CA)	25%
8528.30.40	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	High definition, with a cathode-ray tube:			
8528.30.50	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A,E,IL,J, MX) 0.7% (CA)	25%
8528.30.60	Other.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%
	With a flat panel screen:			
	Incorporating video recording or reproducing apparatus:			
8528.30.62	With a video display diagonal not exceeding 33.02 cm.....	2.3%	Free (A,E,IL, J,MX) 0.7% (CA)	25%
8528.30.64	Other.....	3.9%	Free (A,E,IL, J,MX) 0.7% (CA)	25%
	Other:			
8528.30.66	With a video display diagonal not exceeding 33.02 cm.....	3%	Free (B,E,IL, J,MX) 1% (CA)	35%
8528.30.68	Other.....	5%	Free (B,E,IL, J,MX) 1% (CA)	35%
	Other:			
8528.30.72	Incorporating video recording or reproducing apparatus.....	3.9%	Free (A,E,IL, J,MX) 0.7% (CA)	25%
8528.30.78	Other.....	5%	Free (B,E,IL, J,MX) 1% (CA)	35%
8528.30.90	Black and white or other monochrome.....	5%	Free (B,E,IL,J, MX) 1% (CA)	35%"

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294. (con.)

(b). (con.)

Conforming changes: General note 4(d) is modified by deleting "8528.10.04 Hungary", "8528.10.11 Malaysia", "8528.10.13 Malaysia", and "8528.10.34 Malaysia" and by inserting in numerical sequence the following subheadings and countries:

"8528.12.04	Hungary	8528.21.16	Malaysia
8528.12.12	Malaysia	8528.21.19	Malaysia
8528.12.16	Malaysia	8528.21.41	Malaysia
8528.12.36	Malaysia	8528.30.10	Hungary
8528.21.05	Hungary	8528.30.30	Malaysia"

295. The article description of heading 8537 is modified to read as follows:

"Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517:"

296(a). The following new subheading 8539.32.00 is inserted in numerical order:

	[Electrical...:]			
	[Discharge...:]			
"8539.32.00	Mercury or sodium vapor lamps; metal halide lamps	3.2%	Free (A,E,IL,J, MX) 0.7% (CA)	20%"

(b). Subheadings 8539.40, 8539.40.40 and 8539.40.80 are superseded by the following:

	[Electrical...:]			
	"Ultraviolet or infrared lamps; arc lamps:			
8539.41.00	Arc lamps	3.4%	Free (A,CA,E, IL,J,MX)	35%
8539.49.00	Other	3.2%	Free (A,CA,E, IL,J,MX)	35%"

297. Subheadings 8540.30.00 through 8540.49.00 are superseded by the following:

	[Thermionic,...:]			
"8540.40.00	Data/graphic display tubes, color, with a phosphor dot screen pitch smaller than 0.4 mm	4.8%	Free (B,CA,E, IL,J,MX)	35%
8540.50.00	Data/graphic display tubes, black and white or other monochrome	4.8%	Free (B,CA,E, IL,J,MX)	35%
8540.60.00	Other cathode-ray tubes	4.8%	Free (B,CA,E, IL,J,MX)	35%
	Microwave tubes (for example, magnetrons, klystrons, traveling wave tubes, carcinotrons), excluding grid-controlled tubes:			
8540.71	Magnetrons:			
8540.71.20	Modified for use as parts of microwave ovens	Free		35%
8540.71.40	Other	4%	Free (CA,E,IL, J,MX)	35%

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297. (con.):

	[Thermionic,...:] [con.]			
	Microwave tubes (for example, magnetrons, klystrons, traveling wave tubes, carcinotrons), excluding grid-controlled tubes (con.):			
8540.72.00	Klystrons	3.8%	Free (CA,E,IL, J,MX)	35%
8540.79.00	Other	4%	Free (CA,E,IL, J,MX)	35%"

298. Subheadings 8542.11 (and the superior text thereto reading "Monolithic integrated circuits:") through 8542.90.00 are superseded by the following:

	[Electronic...:]			
	"Monolithic digital integrated circuits:			
8542.12.00	Cards incorporating electronic integrated circuits ("smart" cards)	Free		35%
8542.13	Metal oxide semiconductors (MOS technology):			
8542.13.40	For high definition television, having greater than 100,000 gates	Free		35%
8542.13.80	Other	Free		35%
8542.14	Circuits obtained by bipolar technology:			
8542.14.40	For high definition television, having greater than 100,000 gates	Free		35%
8542.14.80	Other	Free		35%
8542.19	Other, including circuits obtained by a combination of bipolar and MOS technologies (BIMOS technology):			
8542.19.40	For high definition television, having greater than 100,000 gates	Free		35%
8542.19.80	Other	Free		35%
8542.30.00	Other monolithic integrated circuits	Free		35%
8542.40.00	Hybrid integrated circuits	Free		35%
8542.50.00	Electronic microassemblies	Free		35%
8542.90.00	Parts	Free		35%"

299(a). Subheading 8543.10 is superseded by the following:

	[Electrical...:]			
	"Particle accelerators:			
8543.11.00	Ion implanters for doping semiconductor materials	Free		35%
8543.19.00	Other	3.1%	Free (A,CA,E, IL,J,MX)	35%"

(b). The following new subheading 8543.40.00 is inserted in numerical sequence:

	[Electrical...:]			
"8543.40.00	Electric fence energizers	3.4%	Free (A,CA,E, IL,J,MX)	35%"

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299. (con.)

(c). Subheadings 8543.80 through 8543.80.98 are superseded by the following:

	[Electrical...:]			
	"Other machines and apparatus:			
8543.81.00	Proximity cards and tags.....	3.4%	Free (A,CA,E, IL,J,MX)	35%
8543.89	Other:			
8543.89.40	Electric synchros and transducers; flight data recorders; defrosters and demisters with electric resistors for aircraft.....	3.4%	Free (A,C,CA,E, IL,J,MX)	35%
8543.89.60	Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks.....	3.4%	Free (A,B,CA,E, IL,J,MX)	35%
8543.89.70	Electric luminescent lamps.....	2%	Free (A,CA,E, IL,J,MX)	20%
	Other:			
8543.89.80	Microwave amplifiers.....	3.4%	Free (A,B,CA,E, IL,J,MX)	35%
	Other:			
8543.89.85	For electrical nerve stimulation.....	2.3%	Free (A,CA,E, IL,J,MX)	35%
8543.89.90	Other.....	3.4%	Free (A,B,CA,E, IL,J,MX)	35%"

300. Heading 8548.00.00 is superseded by the following:

"8548	Waste and scrap of primary cells, primary batteries and electric storage batteries; spent primary cells, spent primary batteries and spent electric storage batteries; electrical parts of machinery or apparatus, not specified or included elsewhere in this chapter:			
8548.10	Waste and scrap of primary cells, primary batteries and electric storage batteries; spent primary cells, spent primary batteries and spent electric storage batteries:			
	Spent primary cells, spent primary batteries and spent electric storage batteries:			
8548.10.05	For recovery of lead.....	1.4% on the value of the lead content	Free (A,CA,E, IL,J,MX)	11.5%
8548.10.15	Other.....	Free		Free
	Other:			
8548.10.25	For recovery of lead.....	1.4% on the value of the lead content	Free (A,CA,E, IL,J,MX)	11.5%
8548.10.35	Other.....	Free		Free
8548.90.00	Other.....	2.3%	Free (A,B,E, IL,J,MX) 0.7% (CA)	35%"

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301. Note 4 to section XVII is modified to read as follows:

"4. For the purposes of this section:

(a) Vehicles specially constructed to travel on both road and rail are classified under the appropriate heading of chapter 87;

(b) Amphibious motor vehicles are classified under the appropriate heading of chapter 87;

(c) Aircraft specially constructed so that they can also be used as road vehicles are classified under the appropriate heading of chapter 88."

302. Note 2 to chapter 87 is modified by adding the following new second paragraph:

"Machines and working tools designed for fitting to tractors of heading 8701 as interchangeable equipment remain classified in their respective headings even if presented with the tractor, and whether or not mounted on it."

303. The following new subheading note is inserted in chapter 88:

"Subheading Note

1. For the purposes of subheadings 8802.11 to 8802.40, the expression "unladen weight" means the weight of the machine in normal flying order, excluding the weight of crew and of fuel and equipment other than permanently fitted items of equipment."

304(a). The article description of heading 8802 is modified to read as follows:

"Other aircraft (for example, helicopters, airplanes); spacecraft (including satellites) and suborbital and spacecraft launch vehicles:"

(b). The article description of subheading 8802.50 is modified to read as follows, and such subheading is redesignated as 8802.60:

"Spacecraft (including satellites) and suborbital and spacecraft launch vehicles"

(c). Subheadings 8802.50.30 and 8802.50.90 are redesignated as 8802.60.30 and 8802.60.90, respectively, and general note 4(d) is modified by deleting "8802.50.90 Russia" and by inserting in lieu thereof "8802.60.90 Russia".

305. The article description of heading 8804.00.00 is modified to read as follows:

"Parachutes (including dirigible parachutes and paragliders) and rotochutes; parts thereof and accessories thereto"

306. Subdivision (h) of note 1 to chapter 90 is modified by inserting the following new text after the expression "(heading 8522);":

"still image video cameras and other video camera recorders (heading 8525);"

307(a). Subheading 9007.21 and the superior text thereto reading "Projectors:" are superseded by the following:

"9007.20 Projectors:
For film of less than 16 mm:"

(b). Subheadings 9007.21.40 and 9007.21.80 are redesignated as subheadings 9007.20.20 and 9007.20.40, respectively.

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307. (con.)

(c). The numerical subheading code number "9007.29" is deleted; the article description "Other:" is retained at its existing level of indentation.

(d). Subheadings 9007.29.40 and 9007.29.80 are redesignated as 9007.20.60 and 9007.20.80, respectively.

308(a). The article description of heading 9010 is modified by deleting the expression "apparatus for the projection" and inserting the expression "apparatus for the projection or drawing" in lieu thereof.

(b). Subheadings 9010.20 through 9010.30.00 are superseded by the following:

	[Apparatus...:]			
	"Apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials:			
9010.41.00	Direct write-on-wafer apparatus.....	Free		35%
9010.42.00	Step and repeat aligners.....	Free		35%
9010.49.00	Other.....	Free		35%
9010.50	Other apparatus and equipment for photographic (including cinematographic) laboratories; negatoscopes:			
9010.50.10	Contact printers.....	1.3%	Free (A,CA,E, IL,J,MX)	35%
9010.50.20	Developing tanks.....	2.3%	Free (A,E,IL,J, MX) 0.7% (CA)	45%
	Photographic film viewers, titlers, splicers and editors, all the foregoing and combinations thereof:			
	Articles containing an optical lens or designed to contain such a lens:			
9010.50.30	Editors and combination editor-splicers, for cinematographic film.....	6.2%	Free (A,CA,E, IL,J,MX)	45%
9010.50.40	Other.....	7.2%	Free (A,CA,E, IL,J,MX)	45%
9010.50.50	Other.....	2.8%	Free (A,CA,E, IL,J,MX)	35%
9010.50.60	Other.....	Free		35%
9010.60.00	Projection screens.....	3.4%	Free (A,CA,E, IL,J,MX)	50%"

309. The following new subheadings are inserted in numerical sequence:

	[Instruments...:]			
	[Electrodiagnostic...:]			
"9018.12.00	Ultrasonic scanning apparatus.....	2.5%	Free (A,CA,E, IL,J,MX)	35%
9018.13.00	Magnetic resonance imaging apparatus.....	2.5%	Free (A,CA,E, IL,J,MX)	35%
9018.14.00	Scintigraphic apparatus.....	2.5%	Free (A,CA,E, IL,J,MX)	35%"

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310. Subheading 9022.11.00 is superseded by the following:

	[Apparatus...:]				
	[Apparatus...:]				
"9022.12.00	Computed tomography apparatus.....	1.3%	Free (A,E,IL,J, MX) 0.4% (CA)		35%
9022.13.00	Other, for dental uses.....	1.3%	Free (A,E,IL,J, MX) 0.4% (CA)		35%
9022.14.00	Other, for medical, surgical or veterinary uses.....	1.3%	Free (A,E,IL,J, MX) 0.4% (CA)		35%"

311(a). Subheadings 9025.20 through 9025.20.80 are deleted.

(b). The following new subheading 9025.80.15 is inserted in numerical sequence:

	[Hydrometers...:]				
	[Other...:]				
	[Other:]				
"9025.80.15	Barometers, not combined with other instruments.....	2.1%	Free (A,C,E, IL,J,MX) 0.5% (CA)		40%"

312. Subheadings 9030.81 through 9030.89.80, inclusive, are superseded by the following:

	[Oscilloscopes,...:]				
	[Other...:]				
"9030.82.00	For measuring or checking semiconductor wafers or devices.....	Free			40%
9030.83.00	Other, with a recording device.....	3.6%	Free (A,B,C,E, IL,J,MX) 0.9% (CA)		40%
9030.89.00	Other.....	3.6%	Free (A,B,C,E, IL,J,MX) 0.9% (CA)		40%"

313. Subheadings 9031.40 through 9031.40.90, inclusive, are superseded by the following:

	[Measuring...:]				
	"Other optical instruments and appliances:				
9031.41.00	For inspecting semiconductor wafers or devices or for inspecting photomasks or reticles used in manufacturing semiconductor devices.....	Free			50%
9031.49	Other:				
9031.49.40	Coordinate-measuring machines.....	7.4%	Free (A,CA,E, IL,J,MX)		50%
9031.49.80	Other.....	7.4%	Free (A,CA,E, IL,J,MX)		50%"

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313. (con.)
Conforming change: The article description for subheading 9031.90.45 is modified by deleting "9031.40.40" and by inserting in lieu thereof "9031.49.40".

314(a). The superior text immediately preceding subheading 9101.11 is modified by deleting the expression "battery powered" and inserting the expression "electrically operated" in lieu thereof.

(b). The article description, "Battery powered:", in subheading 9101.91 is replaced by the article description, "Electrically operated:".

315(a). The superior text immediately preceding subheading 9102.11 is modified by deleting the expression "battery powered" and inserting the expression "electrically operated" in lieu thereof.

(b). The article description, "Battery powered:", in subheading 9102.91 is replaced by the article description, "Electrically operated:".

316. The article description, "Battery powered:", in subheading 9103.10 is replaced by the article description, "Electrically operated:".

317(a). The article description, "Battery or AC powered:", in subheading 9105.11 is replaced by the article description, "Electrically operated:".

(b). The article description, "Battery or AC powered:", in subheading 9105.21 is replaced by the article description, "Electrically operated:".

(c). The article description, "Battery or AC powered:", in subheading 9105.91 is replaced by the article description, "Electrically operated:".

318. The superior text, "Battery powered:", immediately preceding subheading 9108.11 is replaced by the article description, "Electrically operated:".

319. The superior text, "Battery or AC powered:", immediately preceding subheading 9109.11 is replaced by the article description, "Electrically operated:".

320. Subdivision (m) of note 1 to chapter 95 is superseded by the following:

"(m) Pumps for liquids (heading 8413), filtering or purifying machinery and apparatus for liquids or gases (heading 8421), electric motors (heading 8501), electric transformers (heading 8504) or radio remote control apparatus (heading 8526);"

321(a). Subheading 9614.10.00 is deleted.

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321. (con.)

(b). Subheading 9614.20.40 is superseded by the following:

	[Smoking...:] [Pipes...:] "Of wood or root:			
9614.20.10	Roughly shaped blocks of wood or root, for the manufacture of pipes.....	Free		10%
9614.20.15	Other.....	0.5¢ each + 3.7%	Free (A,E,IL,J, MX) 0.1¢ each + 0.8% (CA)	5¢ each + 60%"

322. Note 3 to chapter 97 is modified to read as follows:

"Heading 9703 does not apply to mass-produced reproductions or works of conventional craftsmanship of a commercial character, even if these articles are designed or created by artists."

323. Conforming changes in chapters 98 and 99 of the tariff schedule and other modifications:

(A). Modifications to chapter 98 of the tariff schedule--

(1). U.S. note 6 to subchapter X of chapter 98 is modified by deleting:

(a). from subdivision (a)(vii) the expression "subheading 7508.00.50" and by inserting in lieu thereof the expression "subheadings 7508.10 and 7508.90.50";

(b). from subdivision (a)(viii) the expression "subheading 7616.90" and by inserting in lieu thereof the expression "subheadings 7616.91 and 7616.99.50";

(c). from subdivision (a)(x) the subheading number "7907.90.60" and by inserting in lieu thereof "7907.00.60";

(d). from subdivision (a)(xiv) the expression "and 8548.00;" and by inserting in lieu thereof "and 8548.90;"; and

(e). from subdivision (a)(xv) the subheading number "8802.50.90" at each instance and by inserting in lieu thereof "8802.60.90".

(2). U.S. note 2 to subchapter XVII of chapter 98 is modified by deleting:

(a). from subdivision (f) the expression "7018.90 and 7019.20" and by inserting in lieu thereof "7018.90, 7019.40, 7019.51, 7019.52 and 7019.59";

(b). from subdivision (o) the expression "(except subheading 7907.10)" and by inserting in lieu thereof "(except gutters, roof capping, skylight frames and other fabricated building components, of zinc)"; and

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323. (con.):
(A). (con.)--
(2). (con.):
(c). from subdivision (u) the expression "8519.91" and by inserting in lieu thereof "8519.92"; such subdivision is further modified by deleting the expression "subheadings 8532.90, 8539.90, 8543.10, 8543.20, 8543.30, 8543.80.60, 8543.80.85, 8543.80.94, 8543.80.98, 8543.90, 8544.70, 8546.90, 8547.20 and 8548.00)" and by inserting in lieu thereof "subheadings 8532.90 and 8539.90, subheadings 8543.11 through 8543.81, subheadings 8543.89.60, 8543.89.80, 8543.89.85, 8543.89.90, 8543.90, 8544.70, 8546.90, 8547.20 and 8548.90)".

(3). The superior text immediately preceding subheading 9817.00.80 is modified by deleting the expression "section VI or in chapter 26" and by inserting in lieu thereof "section VI, chapter 26 or subheading 8548.10".

(4). Heading 9817.82.01 is modified by deleting "8207.12.60" and by inserting in lieu thereof "8207.19.60".

(B). Modifications to chapter 99 of the tariff schedule--

(1). The article description of heading 9901.00.50 is modified by deleting the subheading number "3823" and by inserting in lieu thereof "3824".

(2). The article description of heading 9902.08.07 is modified by deleting the subheading number "0807.10.20" and by inserting in lieu thereof "0807.19.10".

(3). The article description of subheading 9903.23.20 is modified by deleting the subheading number "2101.10.21" and by inserting in lieu thereof "2101.11.21".

(4). The article description of subheading 9903.41.15 is modified by deleting the subheading number "8471.20" and by inserting in lieu thereof "8471.30 or 8471.41".

(5). The article descriptions of subheadings 9903.41.20 and 9903.41.25 are each modified by deleting the subheading number " 8471.91" and by inserting in lieu thereof "8471.49.10 or 8471.50".

(6). The article descriptions of subheadings 9903.41.40 and 9903.41.45 are each modified by deleting the subheading numbers "8528.10.28, 8528.10.48, 8528.10.77 or 8528.10.79" and by inserting in lieu thereof "8528.12.32, 8528.12.48 or 8528.12.88".

(7)(a). The superior text to subheadings 9904.17.17 through 9904.17.48 beginning with the word "Articles", the superior text immediately preceding subheading 9904.17.31, and the article description of subheading 9904.17.46 are each modified by deleting the subheading number "2101.10.48" and by inserting in lieu thereof "2101.12.48".

(b). The superior text to subheadings 9904.17.49 through 9904.17.65 beginning with the word "Articles" and the article description of subheading 9904.17.59 are each modified by deleting the subheading number "2101.10.58" and by inserting in lieu thereof "2101.12.58".

Annex II (con.)
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323. (con.):
(B). (con.)--
(7). (con.)

(c). The superior text to subheadings 9904.17.66 through 9904.17.84 beginning with the word "Blended" and the article description of subheading 9904.17.81 are each modified by deleting the subheading number "2101.10.38" and by inserting in lieu thereof "2101.12.38".

(8). The article description of subheading 9905.00.00 is modified by deleting the subheading numbers "4010.10", "7318.23", "7508.00", "7616.90", "8520.31", "8548.00", and "9030.81" from the listing of headings and subheadings and by inserting the following numbers in numerical sequence therein:

"4010.21.30
4010.21.60
4010.22.30
4010.22.60
4010.29.10
4010.29.20
7508.10
7508.90
7616.91
7616.99
8520.32
8520.33
8548.90
9030.83"

(9). The article description of subheading 9905.00.20 is modified by inserting after "4412.19" the subheading number ", 4412.92".

(10). The article description of subheading 9905.00.30 is modified by deleting the subheading numbers "5407.60.91" and "5407.60.99" from the enumeration of headings and subheadings and by inserting in numerical sequence the following numbers: "5407.61.91", "5407.61.99", "5407.69.20", "5407.69.40", and "5407.69.90".

(11). The article description of subheading 9905.40.15 is modified by deleting the subheading number "4010.99" and by inserting in lieu thereof "4010.23 or 4010.29".

(12). The article descriptions of subheadings 9905.56.10 and 9905.56.20 are each modified by deleting "5603.00" and by inserting in lieu thereof "5603".

(13). The article description of subheading 9905.70.10 is modified by deleting the expression "heading 7019.20" and by inserting in lieu thereof "subheading 7019.40, 7019.51, 7019.52 or 7019.59".

(14). The article description of subheading 9905.72.10 is modified by deleting the subheading numbers "7217.13, 7217.23 or 7217.33" and by inserting in lieu thereof "7217.30".

(15). The article description of subheading 9905.72.20 is modified by deleting the subheading number "7217.31.30" and by inserting in lieu thereof "7217.10.80".

(16). The article description of subheading 9905.72.30 is modified by deleting the subheading number "7217.32.10" and by inserting in lieu thereof "7217.20.45".

Annex II (con.)
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323. (con.):
(B). (con.)--
(17). The article description of subheading 9905.76.30 is modified by deleting the subheading number "7616.90.50" and by inserting in lieu thereof "7616.99.50".

(18). The article description of subheading 9905.79.10 is modified by deleting the subheading number "7907.90.60" and by inserting in lieu thereof "7907.00.60".

(19). The article description of subheading 9905.82.35 is modified by deleting the expression "or 8211.91.60" and by inserting in lieu thereof ", 8211.91.80 or 8211.95.10".

(20). The article description of subheading 9905.85.21 is modified by deleting the subheading number "8506.11.00" and by inserting in lieu thereof "8506.10 having an external volume not exceeding 300 cm^3".

(21). The article description of subheading 9905.85.22 is modified by deleting the subheading number "8506.19.00" and inserting in lieu thereof "8506.50 having an external volume not exceeding 300 cm^3".

(22). The article description of subheading 9905.85.23 is modified by deleting the subheading number "8506.20.00" and by inserting in lieu thereof "8506.10 through 8506.80 having an external volume exceeding 300 cm^3".

(23). The article description of subheading 9905.85.25 is modified--
(a). by deleting the subheading number "8506.11.00" and by inserting in lieu thereof "8506.10 having an external volume not exceeding 300 cm^3";

(b). by deleting the subheading numbers "8506.12.00 or 8506.13.00" and by inserting in lieu thereof "8506.30.10 or 8506.40.10"; and

(c). by deleting the expression "parts of dry cell batteries of subheading 8506.20.00 other than 6 volt alkaline lantern batteries" and by inserting in lieu thereof "parts of dry cell batteries having an external volume exceeding 300 cm^3 of subheadings 8506.10 through 8506.80 other than 6 volt alkaline lantern batteries".

(24). The article description of subheading 9905.85.55 is modified by deleting the subheading number "8527.11," and by inserting in lieu thereof "8525.40, 8527.12, 8527.13,".

(25). The immediately superior text to subheading 9906.08.07 is modified by deleting "0807.10.20" and by inserting in lieu thereof "0807.19.20".

(26). The immediately superior text to subheading 9906.08.09 is modified by deleting "0807.10.40" and by inserting in lieu thereof "0807.11.40".

(27). The immediately superior text to subheading 9906.08.12 is modified by deleting "0807.10.70" and by inserting in lieu thereof "0807.19.70".

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323. (con.):
(B). (con.)--
(28)(a). The immediately superior text to subheading 9906.21.01 is modified by deleting "2101.10.48" and by inserting in lieu thereof "2101.12.48".

(b). The immediately superior text to subheading 9906.21.04 is modified by deleting "2101.10.38" and by inserting in lieu thereof "2101.12.38".

(c). The immediately superior text to subheading 9906.21.07 is modified by deleting "2101.10.58" and by inserting in lieu thereof "2101.12.58".

(29). The immediately superior text to subheading 9906.38.03 is modified by deleting "3823.90.45" and by inserting in lieu thereof "3824.90.45".

(30). Subheading 9906.56.01 and heading 9907.56.01 are each modified by deleting "subheading 5603.00.90" and by inserting in lieu thereof "heading 5603".

(31). The article description of heading 9907.48.03 is modified by deleting "4823.30" and by inserting in lieu thereof "4823.90.30".

(32). Heading 9907.84.15 is modified by deleting "8471.92.52" and by inserting in lieu thereof "8471.49.37 or 8471.60.57".

(33). Heading 9907.85.02 is modified by deleting "8524.23.10" and by inserting in lieu thereof "8524.53.10".

(C). Other modifications
(1). The Chemical Abstracts Service (CAS) registry number "8063-82-9" listed in the Pharmaceutical Appendix to the HTS for the product described by the International Non-proprietary Name of Hypromellose is deleted and the CAS number "9004-65-3" is inserted in lieu thereof.

(2). Headings 9902.29.28 and 9902.38.23 are deleted.

(3). Subheadings 9906.29.25 through 9906.29.27, inclusive, are deleted.

(4). Heading 9907.38.02 is deleted.

Annex III

Section A. Continuation of previously proclaimed staged reductions of the rates of duty in the Rates of Duty 1-General subcolumn.

(1). For each of the following subheadings, the Rates of Duty 1-General subcolumn is modified (i) by deleting the rate of duty in such subcolumn and inserting, on January 1, the rate of duty specified for such subheading in the first dated 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 subheadings in lieu thereof on the date specified.

HTS Subheading	1996	1997	1998	1999	2000	2001	2002	2003	2004
2101.12.38	34.1¢/kg + 9.5%	33.2¢/kg + 9.2%	32.3¢/kg + 9%	31.4¢/kg + 8.8%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%
2101.12.48	34.1¢/kg + 9.5%	33.2¢/kg + 9.2%	32.3¢/kg + 9%	31.4¢/kg + 8.8%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%
2101.12.58	34.1¢/kg + 9.5%	33.2¢/kg + 9.2%	32.3¢/kg + 9%	31.4¢/kg + 8.8%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%	30.5¢/kg + 8.5%
2101.12.90	9.5%	9.2%	9%	8.8%	8.5%	8.5%	8.5%	8.5%	8.5%
2208.90.46	11.6¢/pf. liter	10.8¢/pf. liter	10¢/pf. liter	9.2¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter
2933.39.61	12.1%	11.4%	10.7%	10%	9.3%	8.6%	7.9%	7.2%	6.5%
2933.39.91	3¢/kg + 14.3%	2.6¢/kg + 13.3%	2.2¢/kg + 12.3%	1.8¢/kg + 11.4%	1.5¢/kg + 10.4%	1.1¢/kg + 9.4%	0.7¢/kg + 8.4%	0.4¢/kg + 7.5%	6.5%
3824.40.10	3¢/kg + 12.2%	2.6¢/kg + 11.5%	2.2¢/kg + 10.8%	1.8¢/kg + 10%	1.5¢/kg + 9.3%	1.1¢/kg + 8.6%	0.7¢/kg + 7.9%	0.4¢/kg + 7.2%	6.5%
3824.60.00	5.5%	5.4%	5.2%	5%	4.9%	4.9%	4.9%	4.9%	4.9%
3824.90.19	8.6%	7.9%	7.2%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
3824.90.22	3¢/kg + 14.3%	2.6¢/kg + 13.3%	2.2¢/kg + 12.3%	1.8¢/kg + 11.4%	1.5¢/kg + 10.4%	1.1¢/kg + 9.4%	0.7¢/kg + 8.4%	0.4¢/kg + 7.5%	6.5%
3824.90.25	3¢/kg + 12.2%	2.6¢/kg + 11.5%	2.2¢/kg + 10.8%	1.8¢/kg + 10%	1.5¢/kg + 9.3%	1.1¢/kg + 8.6%	0.7¢/kg + 7.9%	0.4¢/kg + 7.2%	6.5%
3824.90.28	3¢/kg + 12.2%	2.6¢/kg + 11.5%	2.2¢/kg + 10.8%	1.8¢/kg + 10%	1.5¢/kg + 9.3%	1.1¢/kg + 8.6%	0.7¢/kg + 7.9%	0.4¢/kg + 7.2%	6.5%
3824.90.31	6.8%	6.7%	6.6%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
3824.90.32	15.3%	14.2%	13.1%	12%	10.9%	9.8%	8.7%	7.6%	6.5%
3824.90.35	8.6%	7.9%	7.2%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
3824.90.36	7%	6.9%	6.7%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
3824.90.45	6.8%	6.7%	6.6%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
3824.90.46	15.7%	14.6%	13.4%	12.2%	11.1%	10%	8.8%	7.6%	6.5%

Annex III (con.)
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Section A. (continued)

(1). (con.)

HTS Provision	1996	1997	1998	1999	2000	2001	2002	2003	2004
7003.12.00	1.6%	1.6%	1.5%	1.4%	1.4%	1.4%	1.4%	1.4%	1.4%
7004.20.10	2.9%	2%	1%	Free	Free	Free	Free	Free	Free
7004.20.20	1.2¢/kg + 1.8%	1.1¢/kg + 1.8%	1.1¢/kg + 1.7%	1¢/kg + 1.6%	1¢/kg + 1.6%	1¢/kg + 1.6%	1¢/kg + 1.6%	1¢/kg + 1.6%	1¢/kg + 1.6%
7414.20.60	7.2%	5.8%	4.4%	3%	3%	3%	3%	3%	3%
7414.20.90	3.7%	3.4%	3.2%	3%	3%	3%	3%	3%	3%
8005.00.10	5.4%	4.6%	3.8%	3%	3%	3%	3%	3%	3%
8005.00.20	3.6%	3.4%	3.1%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
8202.39.00	1.9%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8207.13.00	5.8%	5%	4.3%	3.6%	3.6%	3.6%	3.6%	3.6%	3.6%
8207.19.30	6.3%	5.9%	5.4%	5%	5%	5%	5%	5%	5%
8207.19.60	3.4%	3.2%	3.1%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%
8211.91.80	0.4¢ each + 5.6%	0.3¢ each + 5.4%	0.3¢ each + 5.1%	0.3¢ each + 4.9%	0.3¢ each + 4.9%	0.3¢ each + 4.9%	0.3¢ each + 4.9%	0.3¢ each + 4.9%	0.3¢ each + 4.9%
8517.50.10	3.7%	3.3%	2.8%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%
8802.60.90	2.2%	1.5%	0.7%	Free	Free	Free	Free	Free	Free
9007.20.20	1.3%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
9007.20.40	6.2%	5.7%	5.3%	4.9%	4.9%	4.9%	4.9%	4.9%	4.9%
9007.20.60	1.3%	0.9%	0.4%	Free	Free	Free	Free	Free	Free
9007.20.80	5.6%	4.9%	4.2%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%

Annex III (con.)
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Section A. (continued)

(2). For each of the following provisions, the Rates of Duty 1-General subcolumn is modified (i) by deleting the rate of duty in such subcolumn and inserting, on January 1, the rate of duty specified for such provision in the first dated 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 Provision	1997	1998	1999	2000	2001	2002	2003	2004
0105.12.00	1.5¢ each	1.3¢ each	1.1¢ each	0.9¢ each	0.9¢ each	0.9¢ each	0.9¢ each	0.9¢ each
0105.19.00	1.5¢ each	1.3¢ each	1.1¢ each	0.9¢ each	0.9¢ each	0.9¢ each	0.9¢ each	0.9¢ each
0105.92.00	3.2¢/kg	2.8¢/kg	2.4¢/kg	2¢/kg	2¢/kg	2¢/kg	2¢/kg	2¢/kg
0105.93.00	3.2¢/kg	2.8¢/kg	2.4¢/kg	2¢/kg	2¢/kg	2¢/kg	2¢/kg	2¢/kg
0207.11.00	9.9¢/kg	9.5¢/kg	9.2¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg
0207.12.00	9.9¢/kg	9.5¢/kg	9.2¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg
0207.13.00	19.8¢/kg	19.1¢/kg	18.3¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg
0207.14.00	19.8¢/kg	19.1¢/kg	18.3¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg
0207.24.00	16.9¢/kg	16.2¢/kg	15.6¢/kg	15¢/kg	15¢/kg	15¢/kg	15¢/kg	15¢/kg
0207.25.20	9.9¢/kg	9.5¢/kg	9.2¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg
0207.25.40	11.3%	10.8%	10.4%	10%	10%	10%	10%	10%
0207.26.00	19.8¢/kg	19.1¢/kg	18.3¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg
0207.27.00	19.8¢/kg	19.1¢/kg	18.3¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg
0207.32.00	9.9¢/kg	9.5¢/kg	9.2¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg
0207.33.00	9.9¢/kg	9.5¢/kg	9.2¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg	8.8¢/kg
0207.34.00	19.8¢/kg	19.1¢/kg	18.3¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg
0207.35.00	19.8¢/kg	19.1¢/kg	18.3¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg
0207.36.00	19.8¢/kg	19.1¢/kg	18.3¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg	17.6¢/kg
0405.10.20	$1.677/kg	$1.632/kg	$1.586/kg	$1.541/kg	$1.541/kg	$1.541/kg	$1.541/kg	$1.541/kg
0405.20.30	$2.172/kg	$2.113/kg	$2.055/kg	$1.996/kg	$1.996/kg	$1.996/kg	$1.996/kg	$1.996/kg
0405.20.40	14.3¢/kg	13.9¢/kg	13.5¢/kg	13.1¢/kg	13.1¢/kg	13.1¢/kg	13.1¢/kg	13.1¢/kg
0405.20.70	76.6¢/kg + 9.2%	74.5¢/kg + 9%	72.5¢/kg + 8.8%	70.4¢/kg + 8.5%	70.4¢/kg + 8.5%	70.4¢/kg + 8.5%	70.4¢/kg + 8.5%	70.4¢/kg + 8.5%
0405.20.80	8.2%	7.6%	7%	6.4%	6.4%	6.4%	6.4%	6.4%
0405.90.20	$2.03/kg + 9.2%	$1.975/kg + 9%	$1.92/kg + 8.8%	$1.865/kg + 8.5%	$1.865/kg + 8.5%	$1.865/kg + 8.5%	$1.865/kg + 8.5%	$1.865/kg + 8.5%
0602.90.40	4.5%	4.2%	3.8%	3.5%	3.5%	3.5%	3.5%	3.5%

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
0602.90.50	1.8¢/kg	1.7¢/kg	1.5¢/kg	1.4¢/kg	1.4¢/kg	1.4¢/kg	1.4¢/kg	1.4¢/kg
0712.90.30	2.6¢/kg	2.5¢/kg	2.4¢/kg	2.3¢/kg	2.3¢/kg	2.3¢/kg	2.3¢/kg	2.3¢/kg
0714.20.10	6.5%	6.3%	6.2%	6%	6%	6%	6%	6%
0714.20.20	7.3%	6.3%	5.4%	4.5%	4.5%	4.5%	4.5%	4.5%
0714.90.45	6.5%	6.3%	6.2%	6%	6%	6%	6%	6%
0807.11.30	14.5%	12.7%	10.8%	9%	9%	9%	9%	9%
0807.11.40	18.5%	18%	17.5%	17%	17%	17%	17%	17%
0807.19.10	16.4%	15.2%	14%	12.8%	12.8%	12.8%	12.8%	12.8%
0807.19.20	32.4%	31.5%	30.7%	29.8%	29.8%	29.8%	29.8%	29.8%
0807.19.50	2.6%	2.2%	1.9%	1.6%	1.6%	1.6%	1.6%	1.6%
0807.19.60	10.2%	8.9%	7.6%	6.3%	6.3%	6.3%	6.3%	6.3%
0807.19.70	7%	6.4%	5.9%	5.4%	5.4%	5.4%	5.4%	5.4%
0807.19.80	31.5%	30.3%	29.2%	28%	28%	28%	28%	28%
0901.90.20	2.4¢/kg	2.1¢/kg	1.8¢/kg	1.5¢/kg	1.5¢/kg	1.5¢/kg	1.5¢/kg	1.5¢/kg
1602.32.00	8.2%	7.6%	7%	6.4%	6.4%	6.4%	6.4%	6.4%
1702.11.00	8.2%	7.6%	7%	6.4%	6.4%	6.4%	6.4%	6.4%
1702.19.00	8.2%	7.6%	7%	6.4%	6.4%	6.4%	6.4%	6.4%
1704.90.35	6.3%	6.1%	5.8%	5.6%	5.6%	5.6%	5.6%	5.6%
1904.20.10	6.3%	6.1%	5.8%	5.6%	5.6%	5.6%	5.6%	5.6%
1904.20.90	16.2%	15.8%	15.3%	14.9%	14.9%	14.9%	14.9%	14.9%
2005.90.30	6.2%	5.7%	5.2%	4.8%	4.8%	4.8%	4.8%	4.8%
2106.90.12	5.4¢/kg + 2.5%	5¢/kg + 2.3%	4.6¢/kg + 2.1%	4.2¢/kg + 1.9%	4.2¢/kg + 1.9%	4.2¢/kg + 1.9%	4.2¢/kg + 1.9%	4.2¢/kg + 1.9%
2106.90.15	10.8¢/kg + 2.5%	10¢/kg + 2.3%	9.2¢/kg + 2.1%	8.4¢/kg + 1.9%	8.4¢/kg + 1.9%	8.4¢/kg + 1.9%	8.4¢/kg + 1.9%	8.4¢/kg + 1.9%
2106.90.18	21.8¢/kg + 2.5%	20.2¢/kg + 2.3%	18.6¢/kg + 2.1%	17¢/kg + 1.9%	17¢/kg + 1.9%	17¢/kg + 1.9%	17¢/kg + 1.9%	17¢/kg + 1.9%
2208.60.10	55.4¢/pf. liter	51.4¢/pf. liter	47.4¢/pf. liter	43.3¢/pf. liter	43.3¢/pf. liter	43.3¢/pf. liter	43.3¢/pf. liter	43.3¢/pf. liter

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
2208.60.20	10.8¢/pf. liter	10¢/pf. liter	9.2¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter
2208.60.50	27.1¢/pf. liter	25.1¢/pf. liter	23.1¢/pf. liter	21.1¢/pf. liter	21.1¢/pf. liter	21.1¢/pf. liter	21.1¢/pf. liter	21.1¢/pf. liter
2208.70.00	10.8¢/pf. liter	10¢/pf. liter	9.2¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter	8.4¢/pf. liter
2306.70.00	0.51¢/kg	0.45¢/kg	0.38¢/kg	0.32¢/kg	0.32¢/kg	0.32¢/kg	0.32¢/kg	0.32¢/kg
2513.20.90	0.3¢/kg	0.1¢/kg	Free	Free	Free	Free	Free	Free
2707.60.10	1¢/kg + 3.3%	0.9¢/kg + 3.1%	0.9¢/kg + 3%	0.9¢/kg + 3%	0.9¢/kg + 3%	0.9¢/kg + 3%	0.9¢/kg + 3%	0.9¢/kg + 3%
2836.99.20	6.1%	5.8%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%
2905.29.10	6.3%	5.9%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%
2914.31.00	10%	9.3%	8.7%	8.1%	7.4%	6.8%	6.1%	5.5%
2914.39.90	10%	9.3%	8.7%	8.1%	7.4%	6.8%	6.1%	5.5%
2914.40.20	9.4%	8.8%	8.2%	7.7%	7.2%	6.6%	6%	5.5%
2914.40.40	9.4%	8.8%	8.2%	7.7%	7.2%	6.6%	6%	5.5%
2916.34.10	6.6%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
2916.34.15	10.3%	9.7%	9.2%	8.7%	8.1%	7.6%	7%	6.5%
2916.34.25	11.4%	10.7%	10%	9.3%	8.6%	7.9%	7.2%	6.5%
2916.34.55	2.6¢/kg + 12.5%	2.2¢/kg + 10.7%	1.8¢/kg + 9%	1.5¢/kg + 7.2%	1.1¢/kg + 5.4%	0.7¢/kg + 3.6%	0.4¢/kg + 1.8%	Free
2916.35.15	10.3%	9.7%	9.2%	8.7%	8.1%	7.6%	7%	6.5%
2916.35.25	11.4%	10.7%	10%	9.3%	8.6%	7.9%	7.2%	6.5%
2916.35.55	2.6¢/kg + 12.5%	2.2¢/kg + 10.7%	1.8¢/kg + 9%	1.5¢/kg + 7.2%	1.1¢/kg + 5.4%	0.7¢/kg + 3.6%	0.4¢/kg + 1.8%	Free
2922.43.10	11.4%	10.7%	10%	9.3%	8.6%	7.9%	7.2%	6.5%
2922.43.50	2.6¢/kg + 12.9%	2.2¢/kg + 12%	1.8¢/kg + 11%	1.5¢/kg + 10.1%	1.1¢/kg + 9.2%	0.7¢/kg + 8.3%	0.4¢/kg + 7.4%	6.5%
2924.22.00	2.6¢/kg + 14.6%	2.2¢/kg + 13.5%	1.8¢/kg + 12.3%	1.5¢/kg + 11.1%	1.1¢/kg + 10%	0.7¢/kg + 8.8%	0.4¢/kg + 7.7%	6.5%
2932.91.00	11.4%	10.7%	10%	9.3%	8.6%	7.9%	7.2%	6.5%
2932.92.00	11.4%	10.7%	10%	9.3%	8.6%	7.9%	7.2%	6.5%
2932.94.00	6.8%	6.6%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
2932.99.08	6.6%	6.6%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
2932.99.20	9.7%	9.3%	8.8%	8.3%	7.9%	7.4%	7%	6.5%
2932.99.35	7%	6.8%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
2932.99.60	11.4%	10.7%	10%	9.3%	8.6%	7.9%	7.2%	6.5%
2932.99.70	2.6¢/kg + 13.3%	2.2¢/kg + 12.3%	1.8¢/kg + 11.4%	1.5¢/kg + 10.4%	1.1¢/kg + 9.4%	0.7¢/kg + 8.4%	0.4¢/kg + 7.5%	6.5%
2933.32.10	2.6¢/kg + 13.3%	2.2¢/kg + 12.3%	1.8¢/kg + 11.4%	1.5¢/kg + 10.4%	1.1¢/kg + 9.4%	0.7¢/kg + 8.4%	0.4¢/kg + 7.5%	6.5%
2933.32.50	11.4%	10.7%	10%	9.3%	8.6%	7.9%	7.2%	6.5%
3302.10.40	10.8¢/kg + 2.5%	10¢/kg + 2.3%	9.2¢/kg + 2.1%	8.4¢/kg + 1.9%	8.4¢/kg + 1.9%	8.4¢/kg + 1.9%	8.4¢/kg + 1.9%	8.4¢/kg + 1.9%
3302.10.50	21.8¢/kg + 2.5%	20.2¢/kg + 2.3%	18.6¢/kg + 2.1%	17¢/kg + 1.9%	17¢/kg + 1.9%	17¢/kg + 1.9%	17¢/kg + 1.9%	17¢/kg + 1.9%
3302.10.90	2.5%	1.3%	Free	Free	Free	Free	Free	Free
3304.99.50	2%	1%	Free	Free	Free	Free	Free	Free
3306.20.00	2.2%	1.1%	Free	Free	Free	Free	Free	Free
3502.11.00	53.6¢/kg	51.6¢/kg	49.6¢/kg	47.6¢/kg	47.6¢/kg	47.6¢/kg	47.6¢/kg	47.6¢/kg
3502.19.00	10.9¢/kg	10.5¢/kg	10.1¢/kg	9.7¢/kg	9.7¢/kg	9.7¢/kg	9.7¢/kg	9.7¢/kg
3823.11.00	2.7¢/kg + 4.9%	2.5¢/kg + 4.5%	2.3¢/kg + 4.2%	2.1¢/kg + 3.8%	2.1¢/kg + 3.8%	2.1¢/kg + 3.8%	2.1¢/kg + 3.8%	2.1¢/kg + 3.8%
3823.12.00	2.7¢/kg + 4.1%	2.5¢/kg + 3.8%	2.3¢/kg + 3.5%	2.1¢/kg + 3.2%	2.1¢/kg + 3.2%	2.1¢/kg + 3.2%	2.1¢/kg + 3.2%	2.1¢/kg + 3.2%
3823.13.00	4.1%	3.8%	3.5%	3.2%	3.2%	3.2%	3.2%	3.2%
3823.19.20	3.6%	3.2%	2.8%	2.3%	2.3%	2.3%	2.3%	2.3%
3823.19.40	4.1%	3.8%	3.5%	3.2%	3.2%	3.2%	3.2%	3.2%
3823.70.20	6.5%	6%	5.6%	5.1%	5.1%	5.1%	5.1%	5.1%
3823.70.40	3.5%	3%	2.5%	2%	2%	2%	2%	2%
3823.70.60	3.1%	2.8%	2.6%	2.4%	2.4%	2.4%	2.4%	2.4%
3901.90.55	10.7%	10.1%	9.5%	8.9%	8.3%	7.7%	7.1%	6.5%
3901.90.90	0.9¢/kg + 7%	0.4¢/kg + 6.7%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
4010.11.00	3.7%	3.5%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%

Section A. (continued)

(2) (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
4010.12.10	4.5%	4.3%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
4010.12.55	7%	6.7%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%
4010.12.90	2.1%	2%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
4010.13.00	3.7%	3.5%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%
4010.19.10	4.5%	4.3%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
4010.19.55	7%	6.7%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%
4010.19.80	2.1%	2%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
4010.19.90	3.7%	3.5%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%
4010.21.30	4.1%	3.7%	3.4%	3.4%	3.4%	3.4%	3.4%	3.4%
4010.21.60	3.4%	3.1%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
4010.22.30	4.1%	3.7%	3.4%	3.4%	3.4%	3.4%	3.4%	3.4%
4010.22.60	3.4%	3.1%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
4010.23.30	4.5%	4.3%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
4010.23.45	7%	6.7%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%
4010.23.50	2.1%	2%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
4010.23.90	3.7%	3.5%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%
4010.24.30	4.5%	4.3%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
4010.24.45	7%	6.7%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%
4010.24.50	2.1%	2%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
4010.24.90	3.7%	3.5%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%
4010.29.10	4.1%	3.7%	3.4%	3.4%	3.4%	3.4%	3.4%	3.4%
4010.29.20	3.4%	3.1%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
4010.29.30	4.5%	4.3%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
4010.29.45	7%	6.7%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%
4010.29.50	2.1%	2%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
4010.29.90	3.7%	3.5%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%
4410.11.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4410.19.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.13.05	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4412.14.05	1.2%	0.6%	Free	Free	Free	Free	Free	Free

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
4412.14.25	6.3%	5.7%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
4412.19.10	2%	1%	Free	Free	Free	Free	Free	Free
4412.19.30	4.2%	3.8%	3.4%	3.4%	3.4%	3.4%	3.4%	3.4%
4412.19.40	12.8%	10.4%	8%	8%	8%	8%	8%	8%
4412.19.50	6.3%	5.7%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
4412.22.05	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.22.10	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4412.22.50	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.23.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.29.15	1.2%	0.6%	Free	Free	Free	Free	Free	Free
4412.29.55	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.92.05	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.92.10	2%	1%	Free	Free	Free	Free	Free	Free
4412.92.30	4.2%	3.8%	3.4%	3.4%	3.4%	3.4%	3.4%	3.4%
4412.92.40	12.8%	10.4%	8%	8%	8%	8%	8%	8%
4412.92.50	6.3%	5.7%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
4412.92.90	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.93.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4412.99.15	2%	1%	Free	Free	Free	Free	Free	Free
4412.99.35	4.2%	3.8%	3.4%	3.4%	3.4%	3.4%	3.4%	3.4%
4412.99.45	12.8%	10.4%	8%	8%	8%	8%	8%	8%
4412.99.55	6.3%	5.7%	5.1%	5.1%	5.1%	5.1%	5.1%	5.1%
4412.99.95	1.6%	0.8%	Free	Free	Free	Free	Free	Free
4807.90.10	2%	1.7%	1.4%	1.1%	0.8%	0.6%	0.3%	Free
4807.90.20	1.7%	1.4%	1.2%	1%	0.7%	0.5%	0.2%	Free
4823.90.30	2.7%	2.3%	2%	1.6%	1.2%	0.8%	0.4%	Free
5407.61.11	22.8¢/kg + 21.2%	22.3¢/kg + 20.7%	21.8¢/kg + 20.2%	21.4¢/kg + 19.8%	20.9¢/kg + 19.4%	20.4¢/kg + 18.9%	19.9¢/kg + 18.4%	19.4¢/kg + 18%
5407.61.19	22.8¢/kg + 21.2%	22.3¢/kg + 20.7%	21.8¢/kg + 20.2%	21.4¢/kg + 19.8%	20.9¢/kg + 19.4%	20.4¢/kg + 18.9%	19.9¢/kg + 18.4%	19.4¢/kg + 18%
5407.61.21	20.7¢/kg + 19.1%	19.5¢/kg + 18%	18.2¢/kg + 16.9%	17¢/kg + 15.8%	15.8¢/kg + 14.7%	14.6¢/kg + 13.5%	13.4¢/kg + 12.4%	12.2¢/kg + 11.3%

Annex III (con.)
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Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
5407.61.29	20.7¢/kg + 19.1%	19.5¢/kg + 18%	18.2¢/kg + 16.9%	17¢/kg + 15.8%	15.8¢/kg + 14.7%	14.6¢/kg + 13.5%	13.4¢/kg + 12.4%	12.2¢/kg + 11.3%
5407.61.91	16.4%	16.2%	16%	15.7%	15.5%	15.3%	15.1%	14.9%
5407.61.99	16.4%	16.2%	16%	15.7%	15.5%	15.3%	15.1%	14.9%
5407.69.10	16.4%	16.2%	16%	15.7%	15.5%	15.3%	15.1%	14.9%
5407.69.20	16.4%	16.2%	16%	15.7%	15.5%	15.3%	15.1%	14.9%
5407.69.30	17¢/kg + 15.8%	14.6¢/kg + 13.5%	12.2¢/kg + 11.2%	9.7¢/kg + 9%	7.3¢/kg + 6.8%	4.9¢/kg + 4.5%	2.4¢/kg + 2.2%	Free
5407.69.40	14.4%	13.6%	12.8%	11.9%	11%	10.2%	9.4%	8.5%
5407.69.90	16.4%	16.2%	16%	15.7%	15.5%	15.3%	15.1%	14.9%
5603.11.00	5%	2.5%	Free	Free	Free	Free	Free	Free
5603.12.00	5%	2.5%	Free	Free	Free	Free	Free	Free
5603.13.00	5%	2.5%	Free	Free	Free	Free	Free	Free
5603.14.30	6.4%	3.2%	Free	Free	Free	Free	Free	Free
5603.14.90	5%	2.5%	Free	Free	Free	Free	Free	Free
5603.91.00	5%	2.5%	Free	Free	Free	Free	Free	Free
5603.92.00	5%	2.5%	Free	Free	Free	Free	Free	Free
5603.93.00	5%	2.5%	Free	Free	Free	Free	Free	Free
5603.94.10	2.4%	2%	1.7%	1.4%	1%	0.7%	0.3%	Free
5603.94.30	6.4%	3.2%	Free	Free	Free	Free	Free	Free
5603.94.90	5%	2.5%	Free	Free	Free	Free	Free	Free
6115.12.10	2.3%	1.2%	Free	Free	Free	Free	Free	Free
6115.12.20	16.4%	16.2%	16%	15.7%	15.5%	15.3%	15.1%	14.9%
6115.19.20	2.3%	1.2%	Free	Free	Free	Free	Free	Free
6115.19.40	12.7%	11.2%	9.8%	8.4%	6.9%	5.5%	4%	2.6%
6115.19.80	16.7%	16.6%	16.5%	16.4%	16.3%	16.2%	16.1%	16%
6115.92.30	2.3%	1.2%	Free	Free	Free	Free	Free	Free
6115.92.60	17%	16%	15%	14%	13%	12%	11%	10%
6115.92.90	14.1%	14%	14%	13.9%	13.8%	13.7%	13.6%	13.5%
6115.93.30	2.3%	1.2%	Free	Free	Free	Free	Free	Free
6115.93.60	19.6%	19.5%	19.4%	19.3%	19.2%	19%	18.9%	18.8%
6115.93.90	15.2%	15.1%	15%	15%	14.9%	14.8%	14.7%	14.6%

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
6305.32.00	9.2%	9.1%	9%	8.8%	8.7%	8.6%	8.5%	8.4%
6305.33.00	9.2%	9.1%	9%	8.8%	8.7%	8.6%	8.5%	8.4%
6402.12.00	2.4%	1.2%	Free	Free	Free	Free	Free	Free
6403.12.60	4%	2%	Free	Free	Free	Free	Free	Free
6909.12.00	5.6%	4.8%	4%	4%	4%	4%	4%	4%
7010.20.20	3%	2.7%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
7010.20.30	6.1%	5.7%	5.2%	5.2%	5.2%	5.2%	5.2%	5.2%
7010.91.20	3%	2.7%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
7010.91.30	6.1%	5.7%	5.2%	5.2%	5.2%	5.2%	5.2%	5.2%
7010.92.20	3%	2.7%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
7010.92.30	6.1%	5.7%	5.2%	5.2%	5.2%	5.2%	5.2%	5.2%
7010.93.20	3%	2.7%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
7010.93.30	6.1%	5.7%	5.2%	5.2%	5.2%	5.2%	5.2%	5.2%
7010.94.20	3%	2.7%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
7010.94.30	6.1%	5.7%	5.2%	5.2%	5.2%	5.2%	5.2%	5.2%
7019.11.00	5.4%	5.2%	4.9%	4.9%	4.9%	4.9%	4.9%	4.9%
7019.12.00	5.3%	5%	4.8%	4.8%	4.8%	4.8%	4.8%	4.8%
7019.19.15	7.1%	7%	7%	6.9%	6.8%	6.7%	6.6%	6.5%
7019.19.28	8.8%	8.6%	8.3%	8%	7.8%	7.5%	7.3%	7%
7019.19.30	5.4%	5.2%	4.9%	4.9%	4.9%	4.9%	4.9%	4.9%
7019.31.00	5.1%	4.7%	4.3%	4.3%	4.3%	4.3%	4.3%	4.3%
7019.32.00	5.1%	4.7%	4.3%	4.3%	4.3%	4.3%	4.3%	4.3%
7019.39.10	5.4%	5.2%	4.9%	4.9%	4.9%	4.9%	4.9%	4.9%
7019.39.50	5.4%	5.2%	4.9%	4.9%	4.9%	4.9%	4.9%	4.9%
7019.40.40	8%	7.9%	7.8%	7.7%	7.6%	7.5%	7.4%	7.3%
7019.40.90	9.9%	9.5%	9%	8.6%	8.2%	7.8%	7.4%	7%
7019.52.40	8%	7.9%	7.8%	7.7%	7.6%	7.5%	7.4%	7.3%
7019.52.90	9.9%	9.5%	9%	8.6%	8.2%	7.8%	7.4%	7%
7019.59.40	8%	7.9%	7.8%	7.7%	7.6%	7.5%	7.4%	7.3%
7019.59.90	9.9%	9.5%	9%	8.6%	8.2%	7.8%	7.4%	7%

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
7019.90.10	5.6%	5.2%	4.8%	4.8%	4.8%	4.8%	4.8%	4.8%
7019.90.50	5.1%	4.7%	4.3%	4.3%	4.3%	4.3%	4.3%	4.3%
7101.22.30	0.8%	0.4%	Free	Free	Free	Free	Free	Free
7101.22.60	0.8%	0.4%	Free	Free	Free	Free	Free	Free
7116.10.25	7.7%	6.6%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%
7201.50.60	0.1%	Free	Free	Free	Free	Free	Free	Free
7208.10.15	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7208.10.30	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.10.60	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7208.25.30	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.25.60	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7208.26.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7208.27.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7208.36.00	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.37.00	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.38.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7208.39.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7208.40.30	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.40.60	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7208.51.00	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.52.00	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.53.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7208.54.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7208.90.00	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.15.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7209.16.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7209.17.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7209.18.15	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7209.18.25	2.2%	1.9%	1.6%	1.3%	1%	0.6%	0.3%	Free
7209.18.60	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
7209.25.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7209.26.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7209.27.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7209.28.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7209.90.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7210.30.00	4.6%	3.9%	3.2%	2.6%	2%	1.3%	0.6%	Free
7210.61.00	4.6%	3.9%	3.2%	2.6%	2%	1.3%	0.6%	Free
7210.69.00	4.6%	3.9%	3.2%	2.6%	2%	1.3%	0.6%	Free
7211.13.00	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7211.14.00	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7211.19.15	4%	3.4%	2.8%	2.3%	1.7%	1.1%	0.6%	Free
7211.19.20	4%	3.4%	2.8%	2.3%	1.7%	1.1%	0.6%	Free
7211.19.30	2.4%	2%	1.7%	1.4%	1%	0.7%	0.3%	Free
7211.19.45	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7211.19.60	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7211.19.75	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7211.23.15	2.4%	2%	1.7%	1.4%	1%	0.7%	0.3%	Free
7211.23.20	4%	3.4%	2.8%	2.3%	1.7%	1.1%	0.6%	Free
7211.23.30	2.4%	2%	1.7%	1.4%	1%	0.7%	0.3%	Free
7211.23.45	1.7%	1.4%	1.2%	1%	0.7%	0.5%	0.2%	Free
7211.23.60	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7211.29.20	2.4%	2%	1.7%	1.4%	1%	0.7%	0.3%	Free
7211.29.45	1.7%	1.4%	1.2%	1%	0.7%	0.5%	0.2%	Free
7211.29.60	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7211.90.00	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7212.20.00	4.6%	3.9%	3.2%	2.6%	2%	1.3%	0.6%	Free
7213.10.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7213.20.00	1.3%	1.1%	1%	0.8%	0.6%	0.4%	0.2%	Free
7213.91.30	1.3%	1.1%	1%	0.8%	0.6%	0.4%	0.2%	Free
7213.91.45	1.3%	1.1%	1%	0.8%	0.6%	0.4%	0.2%	Free

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
7213.91.60	1.6%	1.4%	1.2%	0.9%	0.7%	0.5%	0.2%	Free
7213.99.00	1.3%	1.1%	1%	0.8%	0.6%	0.4%	0.2%	Free
7214.30.00	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.5%	Free
7214.91.00	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.5%	Free
7214.99.00	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.5%	Free
7215.50.00	5.2%	4.5%	3.8%	3%	2.2%	1.5%	0.8%	Free
7216.61.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7216.69.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7216.91.00	3.1%	2.6%	2.2%	1.8%	1.3%	0.9%	0.4%	Free
7216.99.00	3.1%	2.6%	2.2%	1.8%	1.3%	0.9%	0.4%	Free
7217.10.10	2.9%	2.5%	2.1%	1.7%	1.3%	0.8%	0.4%	Free
7217.10.20	2.2%	1.9%	1.6%	1.3%	1%	0.6%	0.3%	Free
7217.10.30	3.6%	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7217.10.40	3.7%	3.2%	2.6%	2.1%	1.6%	1.1%	0.5%	Free
7217.10.50	1%	0.9%	0.8%	0.6%	0.4%	0.3%	0.2%	Free
7217.10.60	3.8%	3.3%	2.8%	2.2%	1.6%	1.1%	0.6%	Free
7217.10.70	2.2%	1.9%	1.6%	1.3%	1%	0.6%	0.3%	Free
7217.10.80	3.7%	3.2%	2.6%	2.1%	1.6%	1.1%	0.5%	Free
7217.10.90	3.8%	3.3%	2.8%	2.2%	1.6%	1.1%	0.6%	Free
7217.20.15	3.6%	3.1%	2.6%	2.1%	1.6%	1%	0.5%	Free
7217.20.30	1%	0.9%	0.8%	0.6%	0.4%	0.3%	0.2%	Free
7217.20.45	3.7%	3.2%	2.6%	2.1%	1.6%	1.1%	0.5%	Free
7217.20.60	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.6%	Free
7217.20.75	3.6%	3.1%	2.6%	2.1%	1.6%	1%	0.5%	Free
7217.30.15	3.6%	3.1%	2.6%	2.1%	1.6%	1%	0.5%	Free
7217.30.30	1%	0.9%	0.8%	0.6%	0.4%	0.3%	0.2%	Free
7217.30.45	3.7%	3.2%	2.6%	2.1%	1.6%	1.1%	0.5%	Free
7217.30.60	3.9%	3.4%	2.8%	2.2%	1.7%	1.1%	0.6%	Free
7217.30.75	3.6%	3.1%	2.6%	2.1%	1.6%	1%	0.5%	Free
7217.90.10	0.6%	0.5%	0.4%	0.4%	0.3%	0.2%	0.1%	Free

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
7217.90.50	3.7%	3.2%	2.6%	2.1%	1.6%	1.1%	0.5%	Free
7218.91.00	3.6%	3.1%	2.6%	2.1%	1.6%	1%	0.5%	Free
7218.99.00	3.6%	3.1%	2.6%	2.1%	1.6%	1%	0.5%	Free
7222.11.00	7.4%	6.4%	5.3%	4.2%	3.2%	2.1%	1.1%	Free
7222.19.00	7.4%	6.4%	5.3%	4.2%	3.2%	2.1%	1.1%	Free
7225.11.00	4.1%	3.5%	2.9%	2.3%	1.7%	1.2%	0.6%	Free
7225.19.00	4.1%	3.5%	2.9%	2.3%	1.7%	1.2%	0.6%	Free
7225.91.00	4.1%	3.5%	2.9%	2.3%	1.7%	1.2%	0.6%	Free
7225.92.00	4.1%	3.5%	2.9%	2.3%	1.7%	1.2%	0.6%	Free
7225.99.00	4.1%	3.5%	2.9%	2.3%	1.7%	1.2%	0.6%	Free
7226.11.10	4.1%	3.5%	2.9%	2.3%	1.7%	1.2%	0.6%	Free
7226.11.90	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
7226.19.10	4.1%	3.5%	2.9%	2.3%	1.7%	1.2%	0.6%	Free
7226.19.90	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
7226.93.00	4.4%	3.8%	3.2%	2.5%	1.9%	1.3%	0.6%	Free
7226.94.00	4.4%	3.8%	3.2%	2.5%	1.9%	1.3%	0.6%	Free
7304.21.30	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7304.21.60	5.2%	4.5%	3.8%	3%	2.2%	1.5%	0.8%	Free
7304.29.10	4.2%	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7304.29.20	0.4%	0.3%	0.2%	0.2%	0.2%	0.1%	Free	Free
7304.29.30	4.3%	3.7%	3.1%	2.5%	1.9%	1.2%	0.6%	Free
7304.29.40	2.3%	2%	1.6%	1.3%	1%	0.7%	0.3%	Free
7304.29.50	5.6%	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7304.29.60	5.2%	4.5%	3.8%	3%	2.2%	1.5%	0.8%	Free
7314.12.10	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7314.12.20	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7314.12.60	7%	6%	5%	4%	3%	2%	1%	Free
7314.12.90	5%	4.3%	3.6%	2.9%	2.2%	1.4%	0.7%	Free
7314.13.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7314.14.10	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
7314.14.20	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7314.14.60	7%	6%	5%	4%	3%	2%	1%	Free
7314.14.90	5%	4.3%	3.6%	2.9%	2.2%	1.4%	0.7%	Free
7314.19.00	3.4%	2.9%	2.4%	2%	1.5%	1%	0.5%	Free
7314.20.00	4%	3.4%	2.8%	2.3%	1.7%	1.1%	0.6%	Free
7314.31.10	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free
7314.31.50	4%	3.4%	2.8%	2.3%	1.7%	1.1%	0.6%	Free
7314.39.00	4%	3.4%	2.8%	2.3%	1.7%	1.1%	0.6%	Free
7314.41.00	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free
7314.42.00	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	0.1¢/kg	Free	Free	Free
7314.49.30	4%	3.4%	2.8%	2.3%	1.7%	1.1%	0.6%	Free
7314.49.60	3.3%	2.8%	2.4%	1.9%	1.4%	0.9%	0.5%	Free
7314.50.00	2.7%	2.3%	1.9%	1.5%	1.1%	0.8%	0.4%	Free
7418.11.20	3.3%	3.1%	3%	3%	3%	3%	3%	3%
7418.11.40	3.8%	3.4%	3%	3%	3%	3%	3%	3%
7418.19.10	3.4%	3.2%	3%	3%	3%	3%	3%	3%
7418.19.20	3.3%	3.1%	3%	3%	3%	3%	3%	3%
7418.19.50	3.8%	3.4%	3%	3%	3%	3%	3%	3%
7508.10.00	4%	3.5%	3%	3%	3%	3%	3%	3%
7508.90.10	3.7%	3.3%	3%	3%	3%	3%	3%	3%
7508.90.50	4%	3.5%	3%	3%	3%	3%	3%	3%
7615.11.00	3.4%	3.2%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%
7615.19.10	3.4%	3.3%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%
7615.19.30	4.1%	3.6%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%
7615.19.50	3.4%	3.3%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%
7615.19.70	3.5%	3.3%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%
7615.19.90	3.4%	3.2%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%
7616.91.00	3.8%	3.1%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
7616.99.50	3.8%	3.1%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
7907.00.10	3.2%	3.1%	3%	3%	3%	3%	3%	3%

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
7907.00.60	4.1%	3.5%	3%	3%	3%	3%	3%	3%
8211.95.10	0.3¢ each + 5.4%	0.3¢ each + 5.1%	0.3¢ each + 4.9%	0.3¢ each + 4.9%	0.3¢ each + 4.9%	0.3¢ each + 4.9%	0.3¢ each + 4.9%	0.3¢ each + 4.9%
8406.10.10	7.2%	7%	6.9%	6.7%	6.7%	6.7%	6.7%	6.7%
8406.10.90	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8406.81.10	7.2%	7%	6.9%	6.7%	6.7%	6.7%	6.7%	6.7%
8406.81.90	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8406.82.10	7.2%	7%	6.9%	6.7%	6.7%	6.7%	6.7%	6.7%
8406.82.90	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8415.20.00	1.7%	1.6%	1.4%	1.4%	1.4%	1.4%	1.4%	1.4%
8443.51.10	3.6%	3.1%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8443.51.50	1.3%	0.7%	Free	Free	Free	Free	Free	Free
8443.59.10	3.6%	3.1%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8443.59.50	1.3%	0.7%	Free	Free	Free	Free	Free	Free
8456.99.30	3.9%	3.7%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%
8456.99.50	2.5%	2.4%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%
8469.11.00	0.9%	0.4%	Free	Free	Free	Free	Free	Free
8469.12.00	0.9%	0.4%	Free	Free	Free	Free	Free	Free
8471.30.00	2.7%	2.3%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
8471.41.00	2.7%	2.3%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
8471.49.10	2.7%	2.3%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
8471.49.15	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.26	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.29	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.31	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.32	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.33	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.34	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.35	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.36	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.37	1.5%	0.7%	Free	Free	Free	Free	Free	Free

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
8471.49.42	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.48	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.50	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.49.70	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8471.49.95	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.50.80	2.7%	2.3%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
8471.60.10	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.35	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.45	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.51	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.52	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.53	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.54	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.55	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.56	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.57	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.80	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.60.90	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.70.30	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.70.50	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.70.90	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.80.90	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8471.90.00	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8475.21.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8475.29.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8476.21.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8476.29.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8476.81.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8476.89.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8479.50.00	3%	2.7%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
8479.60.00	3.4%	3.1%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
8484.20.00	4.6%	4.3%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%
8502.31.00	2.7%	2.6%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
8502.39.00	2.7%	2.6%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
8504.40.70	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8504.40.90	2.1%	1.8%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%
8504.90.70	2.8%	2.6%	2.5%	2.4%	2.4%	2.4%	2.4%	2.4%
8504.90.95	2.8%	2.6%	2.5%	2.4%	2.4%	2.4%	2.4%	2.4%
8506.10.00	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8506.30.10	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8506.30.50	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8506.40.10	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8506.40.50	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8506.50.00	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8506.60.00	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8506.80.00	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8506.90.00	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
8517.11.00	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8517.50.60	3.3%	2.8%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%
8519.92.00	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8519.93.80	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8520.32.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8520.33.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8523.30.00	1.7%	0.8%	Free	Free	Free	Free	Free	Free
8524.10.00	2.6%	2.2%	1.8%	1.8%	1.8%	1.8%	1.8%	1.8%
8524.31.00	3.9¢/m^2 of recording surface	1.9¢/m^2 of recording surface	Free	Free	Free	Free	Free	Free
8524.32.00	3.9¢/m^2 of recording surface	1.9¢/m^2 of recording surface	Free	Free	Free	Free	Free	Free
8524.39.00	3.7%	3.2%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
8524.40.00	6.8¢/m^2 of recording surface	5.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface
8524.51.30	6.8¢/m^2 of recording surface	5.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface
8524.52.10	0.46¢/lin. m	0.4¢/lin. m	0.33¢/lin. m	0.33¢/lin. m	0.33¢/lin. m	0.33¢/lin. m	0.33¢/lin. m	0.33¢/lin. m
8524.52.20	6.8¢/m^2 of recording surface	5.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface
8524.53.10	0.26¢/lin. m	0.13¢/lin. m	Free	Free	Free	Free	Free	Free
8524.53.20	6.8¢/m^2 of recording surface	5.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface	4.8¢/m^2 of recording surface
8524.60.00	3.9¢/m^2 of recording surface	1.9¢/m^2 of recording surface	Free	Free	Free	Free	Free	Free
8524.91.00	3.9¢/m^2 of recording surface	1.9¢/m^2 of recording surface	Free	Free	Free	Free	Free	Free
8524.99.40	3.9¢/m^2 of recording surface	1.9¢/m^2 of recording surface	Free	Free	Free	Free	Free	Free
8525.20.90	2.4%	1.2%	Free	Free	Free	Free	Free	Free
8525.40.00	2.9%	2.5%	2.1%	2.1%	2.1%	2.1%	2.1%	2.1%
8527.12.00	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8527.13.11	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8527.13.20	2%	1%	Free	Free	Free	Free	Free	Free
8527.13.40	1.8%	0.9%	Free	Free	Free	Free	Free	Free
8527.13.60	1.5%	0.7%	Free	Free	Free	Free	Free	Free
8528.12.04	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.12.08	2%	1%	Free	Free	Free	Free	Free	Free
8528.12.12	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.12.20	2%	1%	Free	Free	Free	Free	Free	Free

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
8528.12.62	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.12.68	2%	1%	Free	Free	Free	Free	Free	Free
8528.12.76	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.12.84	2%	1%	Free	Free	Free	Free	Free	Free
8528.21.05	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.21.10	2%	1%	Free	Free	Free	Free	Free	Free
8528.21.16	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.21.24	2%	1%	Free	Free	Free	Free	Free	Free
8528.21.55	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.21.65	2%	1%	Free	Free	Free	Free	Free	Free
8528.21.75	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.21.85	2%	1%	Free	Free	Free	Free	Free	Free
8528.30.10	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.30.20	2%	1%	Free	Free	Free	Free	Free	Free
8528.30.62	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8528.30.66	2%	1%	Free	Free	Free	Free	Free	Free
8539.32.00	2.9%	2.7%	2.4%	2.4%	2.4%	2.4%	2.4%	2.4%
8539.41.00	3.1%	2.9%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8539.49.00	2.9%	2.7%	2.4%	2.4%	2.4%	2.4%	2.4%	2.4%
8540.40.00	4.2%	3.6%	3%	3%	3%	3%	3%	3%
8540.50.00	4.2%	3.6%	3%	3%	3%	3%	3%	3%
8540.60.00	4.2%	3.6%	3%	3%	3%	3%	3%	3%
8540.71.40	3.9%	3.8%	3.7%	3.7%	3.7%	3.7%	3.7%	3.7%
8540.72.00	3.7%	3.5%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%
8540.79.00	3.9%	3.8%	3.7%	3.7%	3.7%	3.7%	3.7%	3.7%
8543.19.00	2.7%	2.3%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
8543.40.00	3.1%	2.9%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8543.81.00	3.1%	2.9%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8543.89.40	3.1%	2.9%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8543.89.60	3.1%	2.9%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%

Section A. (continued)

(2). (con.)

HTS Provision	1997	1998	1999	2000	2001	2002	2003	2004
8543.89.80	3.1%	2.9%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8543.89.85	1.6%	0.8%	Free	Free	Free	Free	Free	Free
8543.89.90	3.1%	2.9%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8548.10.05	0.9% on the value of the lead content	0.5% on the value of the lead content	Free	Free	Free	Free	Free	Free
8548.10.25	0.9% on the value of the lead content	0.5% on the value of the lead content	Free	Free	Free	Free	Free	Free
8548.90.00	1.6%	0.8%	Free	Free	Free	Free	Free	Free
9010.50.10	0.9%	0.4%	Free	Free	Free	Free	Free	Free
9010.50.20	1.5%	0.8%	Free	Free	Free	Free	Free	Free
9010.50.30	5.5%	4.7%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%
9010.50.40	6.3%	5.4%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%
9010.50.50	1.9%	0.9%	Free	Free	Free	Free	Free	Free
9010.60.00	3.2%	2.9%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
9018.12.00	1.7%	0.8%	Free	Free	Free	Free	Free	Free
9018.13.00	1.7%	0.8%	Free	Free	Free	Free	Free	Free
9018.14.00	1.7%	0.8%	Free	Free	Free	Free	Free	Free
9022.12.00	0.8%	0.4%	Free	Free	Free	Free	Free	Free
9022.13.00	0.8%	0.4%	Free	Free	Free	Free	Free	Free
9022.14.00	0.8%	0.4%	Free	Free	Free	Free	Free	Free
9025.80.15	1.7%	1.4%	1%	1%	1%	1%	1%	1%
9030.83.00	3%	2.3%	1.7%	1.7%	1.7%	1.7%	1.7%	1.7%
9030.89.00	3%	2.3%	1.7%	1.7%	1.7%	1.7%	1.7%	1.7%
9031.49.40	6.1%	4.8%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%
9031.49.80	6.1%	4.8%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%
9614.20.15	0.4¢ each + 3.5%	0.4¢ each + 3.4%	0.4¢ each + 3.2%	0.4¢ each + 3.2%	0.4¢ each + 3.2%	0.4¢ each + 3.2%	0.4¢ each + 3.2%	0.4¢ each + 3.2%

Annex III (con.)
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Section A. (continued)

(3). For each of the following subheadings, the Rates of Duty 1-General subcolumn is modified (i) by deleting the rate of duty in such subcolumn and inserting the rate of duty specified for such subheading in the first column in the table below in lieu thereof, and (ii) for each of the subsequent 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 subheadings in lieu thereof on the dates announced for each column in this table by the United States Trade Representative in the Federal Register, at any time after the United States Trade Representative has determined that other major countries provide adequate entity coverage under the Agreement on Government Procurement, entered into on April 15, 1994, or under another binding international agreement.

HTS Subheadings	Stage 1	Stage 2	Stage 3	Stage 4	Stage 5
8517.19.40	7.6%	6.8%	5.9%	5.1%	4.2%
8517.19.80	7.6%	6.8%	5.9%	5.1%	4.2%
8517.21.00	4.2%	3.7%	3.3%	2.8%	2.3%
8517.22.00	4.2%	3.7%	3.3%	2.8%	2.3%
8517.50.50	6.8%	5.1%	3.4%	1.7%	Free
8517.50.90	4.2%	3.7%	3.3%	2.8%	2.3%
8517.80.10	7.6%	6.8%	5.9%	5.1%	4.2%
8517.80.20	4.2%	3.7%	3.3%	2.8%	2.3%

Section B. Continuation of previously proclaimed staged reductions of the rates of duty in the Rates of Duty 1-Special subcolumn on certain goods of Canada under terms of general note 12 to the HTS.

Effective with respect to goods of Canada, under the terms of general note 12 to the HTS, entered, or withdrawn from warehouse for consumption, the Rates of Duty 1-Special subcolumn is modified on or after the dates as specified in this section.

(1). On or after January 1 of each of the years listed below, for each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified (i) by deleting the rate of duty preceding the symbol "CA" in parentheses and inserting the rate of duty specified for such subheading in the first dated column in the table below in lieu thereof, and (ii) for each of the subsequent dated columns the rates of duty that are followed by the symbol "CA" in parentheses are deleted and the following rates of duty are inserted in such subheadings in lieu thereof on the date specified.

HTS Subheading	1996	1997	1998
2101.12.32	2%	1%	Free
2101.12.54	2%	1%	Free
2101.12.90	2%	1%	Free
7414.20.60	2%	1%	Free

Annex III (con.)
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Section B. (continued)
(1). (con.)

HTS Subheading	1996	1997	1998
7414.20.90	0.8%	0.4%	Free
8211.91.80	1.2%	0.6%	Free
8211.92.90	1.2%	0.6%	Free
9007.20.20	0.4%	0.2%	Free
9007.20.40	1.4%	0.7%	Free

(2). On or after January 1 of each of the years listed below, for each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified (i) by deleting the rate of duty preceding the symbol "CA" in parentheses and inserting the rate of duty specified for such subheading in the first dated column in the table below in lieu thereof, and (ii) for each of the subsequent dated columns the rates of duty that are followed by the symbol "CA" in parentheses are deleted and the following rates of duty are inserted in such subheadings in lieu thereof on the date specified.

HTS Subheading	1997	1998
0105.12.00	0.2¢ each	Free
0105.19.00	0.2¢ each	Free
0105.92.00	0.4¢/kg	Free
0105.93.00	0.4¢/kg	Free
0207.11.00	1.1¢/kg	Free
0207.12.00	1.1¢/kg	Free
0207.13.00	2.2¢/kg	Free
0207.14.00	2.2¢/kg	Free
0207.24.00	1.8¢/kg	Free
0207.25.20	1.1¢/kg	Free
0207.25.40	1.2%	Free
0207.26.00	2.2¢/kg	Free
0207.27.00	2.2¢/kg	Free
0207.32.00	1.1¢/kg	Free
0207.33.00	1.1¢/kg	Free
0207.34.00	2.2¢/kg	Free
0207.35.00	2.2¢/kg	Free
0207.36.00	2.2¢/kg	Free
0405.10.05	1.2¢/kg	Free
0405.10.10	1.2¢/kg	Free

Annex III (con.)
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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
0405.20.10	1.5¢/kg	Free
0405.20.20	1.5¢/kg	Free
0405.20.40	1.5¢/kg	Free
0405.20.50	1%	Free
0405.20.60	1%	Free
0405.20.80	1%	Free
0405.90.05	1%	Free
0405.90.10	1%	Free
0602.90.30	0.2%	Free
0602.90.40	0.5%	Free
0602.90.60	0.3%	Free
0602.90.90	0.7%	Free
0714.10.10	1.7%	Free
0714.10.20	2.5%	Free
0714.20.10	0.7%	Free
0714.20.20	1%	Free
0714.90.45	0.7%	Free
0807.11.30	2%	Free
0807.11.40	2%	Free
0807.19.10	2%	Free
0807.19.20	3.5%	Free
0807.19.60	1.4%	Free
0807.19.80	3.5%	Free
1602.32.00	1%	Free
1702.11.00	1%	Free
1702.19.00	1%	Free
1704.90.35	0.7%	Free
1904.20.10	0.7%	Free
1904.20.90	1.7%	Free
2005.90.30	0.7%	Free
2835.29.20	0.1%	Free
3304.99.50	0.4%	Free
3306.20.00	0.5%	Free
3502.11.00	5.9¢/kg	Free
3502.19.00	1.2¢/kg	Free
3823.11.00	0.3¢/kg + 0.6%	Free
3823.12.00	0.3¢/kg + 0.5%	Free
3283.19.20	0.5%	Free

Annex III (con.)
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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
3823.19.40	0.5%	Free
3823.70.20	0.7%	Free
3823.70.40	0.5%	Free
3823.70.60	0.3%	Free
4010.11.00	0.4%	Free
4010.12.10	0.5%	Free
4010.12.50	0.8%	Free
4010.12.55	0.8%	Free
4010.12.90	0.2%	Free
4010.13.00	0.4%	Free
4010.19.10	0.5%	Free
4010.19.50	0.8%	Free
4010.19.55	0.8%	Free
4010.19.80	0.2%	Free
4010.19.90	0.4%	Free
4010.21.30	0.5%	Free
4010.21.60	0.4%	Free
4010.22.30	0.5%	Free
4010.22.60	0.4%	Free
4010.23.30	0.5%	Free
4010.23.41	0.8%	Free
4010.23.45	0.8%	Free
4010.23.50	0.2%	Free
4010.23.90	0.4%	Free
4010.24.30	0.5%	Free
4010.24.41	0.8%	Free
4010.24.45	0.8%	Free
4010.24.50	0.2%	Free
4010.24.90	0.4%	Free
4010.29.10	0.5%	Free
4010.29.20	0.4%	Free
4010.29.30	0.5%	Free
4010.29.41	0.8%	Free
4010.29.45	0.8%	Free
4010.29.50	0.2%	Free
4010.29.90	0.4%	Free
4412.19.10	0.5%	Free
4412.19.30	0.5%	Free

Annex III (con.)
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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
4412.19.40	2%	Free
4412.19.50	0.8%	Free
4412.92.10	0.5%	Free
4412.92.30	0.5%	Free
4412.92.40	2%	Free
4412.92.50	0.8%	Free
4412.92.90	0.4%	Free
4412.99.15	0.5%	Free
4412.99.35	0.5%	Free
4412.99.45	2%	Free
4412.99.55	0.8%	Free
4412.99.95	0.4%	Free
5205.26.00	1.2%	Free
5205.27.00	1.2%	Free
5205.28.00	1.2%	Free
5205.46.00	1.2%	Free
5205.47.00	1.2%	Free
5205.48.00	1.2%	Free
5407.61.11	2.4¢/kg + 2.2%	Free
5407.61.19	2.4¢/kg + 2.2%	Free
5407.61.21	2.4¢/kg + 2.2%	Free
5407.61.29	2.4¢/kg + 2.2%	Free
5407.61.91	1.7%	Free
5407.61.99	1.7%	Free
5407.69.10	1.7%	Free
5407.69.20	1.7%	Free
5407.69.30	2.4¢/kg + 2.2%	Free
5407.69.40	1.7%	Free
5407.69.90	1.7%	Free
5603.11.00	1.2%	Free
5603.12.00	1.2%	Free
5603.13.00	1.2%	Free
5603.14.30	1.6%	Free
5603.14.90	1.2%	Free
5603.91.00	1.2%	Free
5603.92.00	1.2%	Free
5603.93.00	1.2%	Free
5603.94.10	0.3%	Free

Annex III (con.)
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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
5603.94.30	1.6%	Free
5603.94.90	1.2%	Free
6115.12.10	0.5%	Free
6115.12.20	1.7%	Free
6115.19.20	0.5%	Free
6115.19.40	1.7%	Free
6115.19.80	1.7%	Free
6115.92.30	0.5%	Free
6115.92.60	2%	Free
6115.92.90	1.4%	Free
6115.93.30	0.5%	Free
6115.93.60	2%	Free
6115.93.90	1.5%	Free
6305.32.00	0.9%	Free
6305.33.00	0.9%	Free
6402.12.00	0.6%	Free
6403.12.60	1%	Free
6909.12.00	0.8%	Free
7010.20.20	0.3%	Free
7010.20.30	0.7%	Free
7010.91.20	0.3%	Free
7010.91.30	0.7%	Free
7010.92.20	0.3%	Free
7010.92.30	0.7%	Free
7010.93.20	0.3%	Free
7010.93.30	0.7%	Free
7010.94.20	0.3%	Free
7010.94.30	0.7%	Free
7019.12.00	0.6%	Free
7019.32.00	0.6%	Free
7019.39.10	0.6%	Free
7019.39.50	0.6%	Free
7019.40.15	0.6%	Free
7019.40.40	0.8%	Free
7019.40.90	1.1%	Free
7019.51.90	0.6%	Free
7019.52.40	0.8%	Free
7019.52.90	1.1%	Free

Annex III (con.)
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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
7019.59.40	0.8%	Free
7019.59.90	1.1%	Free
7019.90.10	0.6%	Free
7019.90.50	0.6%	Free
7208.10.15	0.5%	Free
7208.10.30	0.6%	Free
7208.10.60	0.4%	Free
7208.25.30	0.6%	Free
7208.25.60	0.5%	Free
7208.26.00	0.5%	Free
7208.27.00	0.5%	Free
7208.36.00	0.6%	Free
7208.37.00	0.6%	Free
7208.38.00	0.4%	Free
7208.39.00	0.4%	Free
7208.40.30	0.6%	Free
7208.40.60	0.4%	Free
7208.51.00	0.6%	Free
7208.52.00	0.6%	Free
7208.53.00	0.4%	Free
7208.54.00	0.4%	Free
7208.90.00	0.5%	Free
7209.15.00	0.5%	Free
7209.16.00	0.5%	Free
7209.17.00	0.5%	Free
7209.18.15	0.5%	Free
7209.18.25	0.3%	Free
7209.18.60	0.5%	Free
7209.25.00	0.5%	Free
7209.26.00	0.5%	Free
7209.27.00	0.5%	Free
7209.28.00	0.5%	Free
7209.90.00	0.5%	Free
7210.30.00	0.6%	Free
7210.61.00	0.6%	Free
7210.69.00	0.6%	Free
7211.13.00	0.6%	Free
7211.14.00	0.6%	Free

Annex III (con.)
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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
7211.19.15	0.5%	Free
7211.19.20	0.5%	Free
7211.19.30	0.3%	Free
7211.19.45	0.4%	Free
7211.19.60	0.5%	Free
7211.19.75	0.4%	Free
7211.23.15	0.3%	Free
7211.23.20	0.5%	Free
7211.23.30	0.3%	Free
7211.23.45	0.2%	Free
7211.23.60	0.5%	Free
7211.29.20	0.3%	Free
7211.29.45	0.2%	Free
7211.29.60	0.5%	Free
7211.90.00	0.5%	Free
7212.20.00	0.6%	Free
7213.10.00	0.4%	Free
7213.20.00	0.1%	Free
7213.91.30	0.1%	Free
7213.91.45	0.1%	Free
7213.91.60	0.2%	Free
7213.99.00	0.1%	Free
7214.30.00	0.4%	Free
7214.91.00	0.4%	Free
7214.99.00	0.4%	Free
7215.50.00	0.7%	Free
7216.61.00	0.4%	Free
7216.69.00	0.4%	Free
7216.91.00	0.4%	Free
7216.99.00	0.4%	Free
7217.10.10	0.4%	Free
7217.10.20	0.3%	Free
7217.10.30	0.5%	Free
7217.10.40	0.5%	Free
7217.10.50	0.1%	Free
7217.10.60	0.5%	Free
7217.10.70	0.3%	Free
7217.10.80	0.5%	Free

Annex III (con.)
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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
7217.10.90	0.5%	Free
7217.20.15	0.5%	Free
7217.20.30	0.1%	Free
7217.20.45	0.5%	Free
7217.20.60	0.5%	Free
7217.20.75	0.5%	Free
7217.30.15	0.5%	Free
7217.30.30	0.1%	Free
7217.30.45	0.5%	Free
7217.30.60	0.5%	Free
7217.30.75	0.5%	Free
7217.90.10	Free	Free
7217.90.50	0.5%	Free
7218.91.00	0.5%	Free
7218.99.00	0.5%	Free
7222.11.00	1%	Free
7222.19.00	1%	Free
7225.91.00	0.5%	Free
7225.92.00	0.5%	Free
7225.99.00	0.5%	Free
7226.93.00	0.6%	Free
7226.94.00	0.6%	Free
7304.21.30	0.8%	Free
7304.21.60	0.7%	Free
7304.29.10	0.6%	Free
7304.29.20	Free	Free
7304.29.30	0.6%	Free
7304.29.40	0.3%	Free
7304.29.50	0.8%	Free
7304.29.60	0.7%	Free
7314.12.10	0.4%	Free
7314.12.20	0.4%	Free
7314.12.60	1%	Free
7314.12.90	0.7%	Free
7314.13.00	0.4%	Free
7314.14.10	0.4%	Free
7314.14.20	0.4%	Free
7314.14.60	1%	Free

Annex III (con.)
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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
7314.14.90	0.7%	Free
7314.19.00	0.4%	Free
7314.20.00	0.5%	Free
7314.31.50	0.5%	Free
7314.39.00	0.5%	Free
7314.49.30	0.5%	Free
7314.49.60	0.4%	Free
7418.11.20	0.3%	Free
7418.11.40	0.4%	Free
7418.19.10	0.4%	Free
7418.19.20	0.3%	Free
7418.19.50	0.4%	Free
7508.10.00	0.5%	Free
7508.90.10	0.4%	Free
7508.90.50	0.5%	Free
7615.11.00	0.3%	Free
7615.19.10	0.3%	Free
7615.19.30	0.5%	Free
7615.19.50	0.3%	Free
7615.19.70	0.4%	Free
7615.19.90	0.3%	Free
7616.91.00	0.5%	Free
7616.99.50	0.5%	Free
7907.00.10	0.3%	Free
7907.00.60	0.5%	Free
8211.95.10	0.6%	Free
8211.95.50	0.6%	Free
8211.95.90	0.2¢ each + 0.4%	Free
8506.10.00	0.5%	Free
8506.30.50	0.5%	Free
8506.40.50	0.5%	Free
8506.50.00	0.5%	Free
8506.60.00	0.5%	Free
8506.80.00	0.5%	Free
8506.90.00	0.5%	Free
8510.30.00	0.4%	Free
8519.92.00	0.3%	Free
8519.93.80	0.3%	Free

Annex III (con.)
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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
8520.32.00	0.3%	Free
8520.33.00	0.3%	Free
8523.30.00	0.4%	Free
8524.10.00	0.3%	Free
8524.31.00	0.9¢/m^2 of recording surface	Free
8524.32.00	0.9¢/m^2 of recording surface	Free
8524.39.00	0.5%	Free
8524.40.00	0.9¢/m^2 of recording surface	Free
8524.51.30	0.9¢/m^2 of recording surface	Free
8524.52.10	Free	Free
8524.52.20	0.9¢/m^2 of recording surface	Free
8524.53.10	Free	Free
8524.53.20	0.9¢/m^2 of recording surface	Free
8524.60.00	0.9¢/m^2 of recording surface	Free
8524.91.00	0.9¢/m^2 of recording surface	Free
8524.99.40	0.9¢/m^2 of recording surface	Free
8528.12.04	0.3%	Free
8528.12.08	0.5%	Free
8528.12.12	0.3%	Free
8528.12.16	0.3%	Free
8528.12.20	0.5%	Free
8528.12.24	0.5%	Free
8528.12.28	0.3%	Free
8528.12.32	0.5%	Free
8528.12.36	0.3%	Free
8528.12.40	0.5%	Free
8528.12.44	0.3%	Free
8528.12.48	0.5%	Free
8528.12.52	0.3%	Free
8528.12.56	0.5%	Free

Annex III (con.)
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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
8528.12.62	0.3%	Free
8528.12.64	0.3%	Free
8528.12.68	0.5%	Free
8528.12.72	0.5%	Free
8528.12.76	0.3%	Free
8528.12.80	0.3%	Free
8528.12.84	0.5%	Free
8528.12.88	0.5%	Free
8528.13.00	0.5%	Free
8528.21.05	0.3%	Free
8528.21.10	0.5%	Free
8528.21.16	0.3%	Free
8528.21.19	0.3%	Free
8528.21.24	0.5%	Free
8528.21.29	0.5%	Free
8528.21.34	0.3%	Free
8528.21.39	0.5%	Free
8528.21.41	0.3%	Free
8528.21.42	0.5%	Free
8528.21.44	0.3%	Free
8528.21.49	0.5%	Free
8528.21.51	0.3%	Free
8528.21.52	0.5%	Free
8528.21.55	0.3%	Free
8528.21.60	0.3%	Free
8528.21.65	0.5%	Free
8528.21.70	0.5%	Free
8528.21.75	0.3%	Free
8528.21.80	0.3%	Free
8528.21.85	0.5%	Free
8528.21.90	0.5%	Free
8528.22.00	0.5%	Free
8528.30.10	0.3%	Free
8528.30.20	0.5%	Free
8528.30.30	0.3%	Free
8528.30.40	0.5%	Free
8528.30.50	0.3%	Free
8528.30.60	0.5%	Free

Annex III (con.)
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Section B. (continued)
(2) (con.)

HTS Subheading	1997	1998
8528.30.62	0.3%	Free
8528.30.64	0.3%	Free
8528.30.66	0.5%	Free
8528.30.68	0.5%	Free
8528.30.72	0.3%	Free
8528.30.78	0.5%	Free
8528.30.90	0.5%	Free
8539.32.00	0.3%	Free
8548.90.00	0.3%	Free
9010.50.20	0.3%	Free
9022.12.00	0.2%	Free
9022.13.00	0.2%	Free
9022.14.00	0.2%	Free
9025.80.15	0.2%	Free
9030.83.00	0.4%	Free
9030.89.00	0.4%	Free
9614.20.15	0.4%	Free

Section C. Continuation of previously proclaimed staged reductions of the rates of duty in the Rates of Duty 1-Special subcolumn on certain goods of Mexico under terms of general note 12 to the HTS.

Effective with respect to goods of Mexico, under the terms of general note 12 to the HTS, entered, or withdrawn from warehouse for consumption, the Rates of Duty 1-Special subcolumn is modified on or after the dates as specified in this section.

(1). On or after January 1 of each of the years listed below, for each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified (i) by deleting the rate of duty preceding the symbol "MX" in parentheses and inserting the rate of duty specified for such subheading in the first dated column in the table below in lieu thereof, and (ii) for each of the subsequent dated columns the rates of duty that are followed by the symbol "MX" in parentheses are deleted and the following rates of duty are inserted in such subheadings in lieu thereof on the date specified.

HTS Subheading	1996	1997	1998	1999	2000	2001	2002	2003
2933.39.61	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2933.39.91	1.4¢/kg + 6.4%	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
3824.40.10	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
3824.40.50	2%	1%	Free	Free	Free	Free	Free	Free
3824.90.28	2.5¢/kg + 9.5%	2.2¢/kg + 8.1%	1.8¢/kg + 6.8%	1.4¢/kg + 5.4%	1.1¢/kg + 4%	0.7¢/kg + 2.7%	0.3¢/kg + 1.3%	Free
3824.90.90	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free

Section C. (continued)

(2). On or after January 1 of each of the years listed below, for each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified (i) by deleting the rate of duty preceding the symbol "MX" in parentheses and inserting the rate of duty specified for such subheading in the first dated column in the table below in lieu thereof, and (ii) for each of the subsequent dated columns the rates of duty that are followed by the symbol "MX" in parentheses are deleted and the following rates of duty are inserted in such subheadings in lieu thereof on the date specified.

HTS Subheading	1997	1998	1999	2000	2001	2002	2003
0405.20.40	9.2¢/kg	7.7¢/kg	6.1¢/kg	4.6¢/kg	3¢/kg	1.5¢/kg	Free
0712.90.30	0.5¢/kg	Free	Free	Free	Free	Free	Free
0807.19.10	12%	10%	8%	6%	4%	2%	Free
0807.19.80	25.6%	23.3%	21%	18.6%	16.3%	14%	11.6% 1/
1904.20.10	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
1904.20.90	3.5%	Free	Free	Free	Free	Free	Free
2005.90.30	1.5%	Free	Free	Free	Free	Free	Free
2914.40.20	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
2914.40.40	6.6%	5.5%	4.4%	3.3%	2.2%	1.1%	Free
2924.22.00	2.2¢/kg + 10.8%	1.8¢/kg + 9%	1.4¢/kg + 7.2%	1.1¢/kg + 5.4%	0.7¢/kg + 3.6%	0.3¢/kg + 1.8%	Free
2933.32.10	0.7¢/kg + 3.2%	Free	Free	Free	Free	Free	Free
2933.32.50	2.7%	Free	Free	Free	Free	Free	Free
4010.12.90	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
4010.19.80	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
4010.23.50	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free

1/ For subheading 0807.19.80, the rates of duty after 2003 will be as follows:
Effective with respect to articles entered on or after January 1, 2004-- 9.3%
Effective with respect to articles entered on or after January 1, 2005-- 7%
Effective with respect to articles entered on or after January 1, 2006-- 4.6%
Effective with respect to articles entered on or after January 1, 2007-- 2.3%
Effective with respect to articles entered on or after January 1, 2008-- Free

Section C. (continued)

(2). (con.)

HTS Subheading	1997	1998	1999	2000	2001	2002	2003
4010.24.50	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
4010.29.50	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
4412.19.50	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
5205.26.00	4.2%	2.1%	Free	Free	Free	Free	Free
5205.27.00	4.2%	2.1%	Free	Free	Free	Free	Free
5205.28.00	4.2%	2.1%	Free	Free	Free	Free	Free
5205.46.00	4.2%	2.1%	Free	Free	Free	Free	Free
5205.47.00	4.2%	2.1%	Free	Free	Free	Free	Free
5205.48.00	4.2%	2.1%	Free	Free	Free	Free	Free
5407.61.11	7.2%	3.6%	Free	Free	Free	Free	Free
5407.61.19	7.2%	3.6%	Free	Free	Free	Free	Free
5407.61.21	7.1%	3.5%	Free	Free	Free	Free	Free
5407.61.29	7.1%	3.5%	Free	Free	Free	Free	Free
5407.61.91	5.6%	2.8%	Free	Free	Free	Free	Free
5407.61.99	5.6%	2.8%	Free	Free	Free	Free	Free
5407.69.10	5.6%	2.8%	Free	Free	Free	Free	Free
5407.69.20	5.6%	2.8%	Free	Free	Free	Free	Free
5407.69.30	7.1%	3.5%	Free	Free	Free	Free	Free
5407.69.40	5.6%	2.8%	Free	Free	Free	Free	Free
5407.69.90	5.6%	2.8%	Free	Free	Free	Free	Free
5603.11.00	4.3%	2.1%	Free	Free	Free	Free	Free
5603.12.00	4.3%	2.1%	Free	Free	Free	Free	Free
5603.13.00	4.3%	2.1%	Free	Free	Free	Free	Free
5603.14.30	5.3%	2.6%	Free	Free	Free	Free	Free
5603.14.90	4.3%	2.1%	Free	Free	Free	Free	Free
5603.91.00	4.3%	2.1%	Free	Free	Free	Free	Free
5603.92.00	4.3%	2.1%	Free	Free	Free	Free	Free
5603.93.00	4.3%	2.1%	Free	Free	Free	Free	Free
5603.94.10	1.3%	0.6%	Free	Free	Free	Free	Free
5603.94.30	5.3%	2.6%	Free	Free	Free	Free	Free

Section C. (continued)

(2). (con.)

HTS Subheading	1997	1998	1999	2000	2001	2002	2003
5603.94.90	4.3%	2.1%	Free	Free	Free	Free	Free
6115.12.20	5.6%	2.8%	Free	Free	Free	Free	Free
6115.19.40	5.6%	2.8%	Free	Free	Free	Free	Free
6115.19.80	5.6%	2.8%	Free	Free	Free	Free	Free
6115.92.60	6.4%	3.2%	Free	Free	Free	Free	Free
6115.92.90	4.9%	2.4%	Free	Free	Free	Free	Free
6115.93.60	6.4%	3.2%	Free	Free	Free	Free	Free
6115.93.90	5.2%	2.6%	Free	Free	Free	Free	Free
6305.32.00	3.4%	1.7%	Free	Free	Free	Free	Free
6305.33.00	3.4%	1.7%	Free	Free	Free	Free	Free
7019.19.15	2.7%	1.3%	Free	Free	Free	Free	Free
7019.19.28	3.4%	1.7%	Free	Free	Free	Free	Free
7019.19.90	1.2%	Free	Free	Free	Free	Free	Free
7019.40.15	2.2%	1.1%	Free	Free	Free	Free	Free
7019.40.40	3%	1.5%	Free	Free	Free	Free	Free
7019.40.90	3.9%	1.9%	Free	Free	Free	Free	Free
7019.51.90	2.2%	1.1%	Free	Free	Free	Free	Free
7019.52.40	3%	1.5%	Free	Free	Free	Free	Free
7019.52.90	3.9%	1.9%	Free	Free	Free	Free	Free
7019.59.40	3%	1.5%	Free	Free	Free	Free	Free
7019.59.90	3.9%	1.9%	Free	Free	Free	Free	Free
7208.10.15	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.10.30	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.10.60	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.25.30	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.25.60	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.26.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.27.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7208.36.00	3.6%	3%	2.4%	1.8%	1.2%	0.6	Free
7208.37.00	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free

Section C. (continued)

(2). (con.)

HTS Subheading	1997	1998	1999	2000	2001	2002	2003
7208.38.00	2.9	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.39.00	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.40.30	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.40.60	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.51.00	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.52.00	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7208.53.00	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.54.00	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7208.90.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.15.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.16.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.17.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.18.15	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.18.25	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
7209.18.60	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.25.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.26.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.27.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.28.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7209.90.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7210.30.00	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7210.61.00	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7210.69.00	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7211.13.00	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7211.14.00	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7211.19.15	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7211.19.20	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7211.19.30	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7211.19.45	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7211.19.60	3%	2.5%	2%	1.5%	1%	0.5%	Free

Section C. (continued)

(2). (con.)

HTS Subheading	1997	1998	1999	2000	2001	2002	2003
7211.19.75	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7211.23.15	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7211.23.20	3.4%	2.8%	2.2%	1.7%	1.1%	0.5%	Free
7211.23.30	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7211.23.45	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
7211.23.60	3%	2.5%	2%	1.5%	1%	0.5%	Free
7211.29.20	2%	1.7%	1.3%	1%	0.6%	0.3%	Free
7211.29.45	1.4%	1.2%	0.9%	0.7%	0.4%	0.2%	Free
7211.29.60	3%	2.5%	2%	1.5%	1%	0.5%	Free
7211.90.00	3%	2.5%	2%	1.5%	1%	0.5%	Free
7212.20.00	3.9%	3.2%	2.6%	1.9%	1.3%	0.6%	Free
7213.10.00	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7213.20.00	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7213.91.30	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7213.91.45	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7213.91.60	1.3%	1.1%	0.9%	0.6%	0.4%	0.2%	Free
7213.99.00	1.1%	0.9%	0.7%	0.5%	0.3%	0.1%	Free
7214.30.00	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7214.91.00	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7214.99.00	2.8%	2.3%	1.8%	1.4%	0.9%	0.4%	Free
7215.50.00	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7216.91.00	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
7216.99.00	2.6%	2.2%	1.7%	1.3%	0.8%	0.4%	Free
7217.10.10	2.5%	2.1%	1.6%	1.2%	0.8%	0.4%	Free
7217.10.20	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
7217.10.30	3%	2.5%	2%	1.5%	1%	0.5%	Free
7217.10.40	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.10.50	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7217.10.60	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
7217.10.70	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free

Section C. (continued)

(2). (con.)

HTS Subheading	1997	1998	1999	2000	2001	2002	2003
7217.10.80	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.10.90	3.3%	2.7%	2.2%	1.6%	1.1%	0.5%	Free
7217.20.15	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7217.20.30	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7217.20.45	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.20.60	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
7217.20.75	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7217.30.15	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.30.30	0.9%	0.7%	0.6%	0.4%	0.3%	0.1%	Free
7217.30.45	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7217.30.60	3.3%	2.8%	2.2%	1.6%	1.1%	0.5%	Free
7217.30.75	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7217.90.10	0.5%	0.4%	0.3%	0.2%	0.1%	Free	Free
7217.90.50	3.1%	2.6%	2.1%	1.5%	1%	0.5%	Free
7218.91.00	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7218.99.00	3.1%	2.6%	2%	1.5%	1%	0.5%	Free
7222.11.00	6.3%	5.3%	4.2%	3.1%	2.1%	1%	Free
7222.19.00	6.3%	5.3%	4.2%	3.1%	2.1%	1%	Free
7226.93.00	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
7226.94.00	3.7%	3.1%	2.5%	1.8%	1.2%	0.6%	Free
7304.21.30	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7304.21.60	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7304.29.10	3.6%	3%	2.4%	1.8%	1.2%	0.6%	Free
7304.29.20	0.3%	0.2%	0.2%	0.1%	0.1%	Free	Free
7304.29.30	3.7%	3.1%	2.4%	1.8%	1.2%	0.6%	Free
7304.29.40	1.9%	1.6%	1.3%	0.9%	0.6%	0.3%	Free
7304.29.50	4.8%	4%	3.2%	2.4%	1.6%	0.8%	Free
7304.29.60	4.5%	3.7%	3%	2.2%	1.5%	0.7%	Free
7314.13.00	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7314.19.00	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free

Section C. (continued)

(2). (con.)

HTS Subheading	1997	1998	1999	2000	2001	2002	2003
7314.31.10	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free
7314.41.00	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free
7314.42.00	0.1¢/kg	0.1¢/kg	Free	Free	Free	Free	Free
9906.06.41	90.3¢/kg	75.3¢/kg	60.2¢/kg	45.2¢/kg	30.1¢/kg	15.1¢/kg	Free
9906.06.42	57.4%	47.9%	38.3%	28.7%	19.1%	9.6%	Free
9906.06.44	42.2¢/kg	35.2¢/kg	28.1¢/kg	21.1¢/kg	14.1¢/kg	7¢/kg	Free
9906.06.45	56.3%	47%	37.6%	28.2%	18.8%	9.4%	Free
9906.29.40	2.7%	Free	Free	Free	Free	Free	Free

(3). On January 1, 2003, the Rates of Duty 1-Special subcolumn for subheadings 0405.10.20, 0405.20.30, 0405.20.70, 0405.90.20, 2101.12.38, 2101.12.48 and 2101.12.58 is modified by deleting the "(MX)" symbol and the rate preceding such symbol and inserting a "Free" rate of duty followed by the symbol "MX" in parenthesis.

(4). On January 1, 2003, the Rates of Duty 1-Special subcolumn for subheadings 0807.11.40, 0807.19.70 and 3824.90.45 is modified by deleting the "(MX)" symbol and the rate preceding such symbol and inserting a "MX" symbol, alphabetically, in the parenthesis following the "Free" rate of duty in such subcolumn.

(5). On January 1, 2008, the Rates of Duty 1-Special subcolumn for subheading 0807.19.20 is modified by deleting the "(MX)" symbol and the rate preceding such symbol and inserting a "MX" symbol, alphabetically, in the parenthesis following the "Free" rate of duty in such subcolumn.

ANNEX IV

TECHNICAL MODIFICATIONS TO PROCLAMATION 6763
OF DECEMBER 23, 1994

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the effective dates in such proclamation:

The Annex to Presidential Proclamation 6763 of December 23, 1994, is modified as follows:

In section A of such Annex:

1. Item 26 is modified by deleting ", the designation "b" for the remaining text, subdivisions (b)(1) and (2) shall then be redesignated as "(a)" and "(b)",".

2. Item 32(d) is modified by inserting after "(a)(i)" the expression "of additional U.S. note 5".

3. Item 36 is modified by deleting "subdivision (a) of additional U.S. note 3" and by inserting in lieu thereof "subdivision (a) of additional U.S. note 1".

4. Item 38 is modified by deleting "subdivision (a) of additional U.S. note 4" and by inserting in lieu thereof "subdivision (a) of additional U.S. note 3".

4. Item 119(a) is modified by deleting "2-(N-Benzyl-N-tert-butylamino)-4'-hydroxy-3'-hydromethylacetophenone hydrochloride;" from the article description of subheading 2922.50.07.

5. Item 321 is modified by adding a conforming change as follows:

"Conforming change: The article description for subheading 8529.90.53 is modified by deleting "8528.10.64 and 8528.10.68" and inserting "8528.10.61, 8528.10.63, 8528.10.67 and 8528.10.69" in lieu thereof."

In section B(1) of such Annex by deleting "Additional U.S. note 5 to chapter 20: Countries identified in additional U.S. note 6 to chapter 20" and inserting in lieu thereof "Additional U.S. note 5 to chapter 20: Countries or territories identified in additional U.S. note 6 to this chapter combined (aggregate)".

In section E(2) of such Annex by inserting "2925.20.90" in numerical sequence.

[FR Doc. 95–30537
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Billing code 3190–01–C

Federal Register

Friday
December 15, 1995

Part IV

Federal Communications Commission

47 CFR Part 36

Federal-State Joint Board Extension of Indexed Cap on Total Level of Universal Service Fund; Proposed Rule

Establishment of a Joint Board; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286, FCC 95J–1]

Federal-State Joint Board; Extension of Indexed Cap on Total Level of Universal Service Fund

AGENCY: Federal Communications Commission.

ACTION: Recommended decision of Federal-State Joint Board.

SUMMARY: The Federal-State Joint Board recommends the extension of the duration of the interim indexed cap on the total level of the Universal Service Fund (USF) for an additional six months. The cap was intended as an interim measure moderating the growth of the USF during the pendency of a broader rulemaking revising the Part 36 jurisdictional separations rules governing the USF. The Federal-State Joint Board recommends the extension of the interim cap, which expires January 1, 1996, for an additional six months while that rulemaking is completed.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, 202–418–0844, Deborah A. Dupont, 202–418–0873, Accounting and Audits Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal-State Joint Board's Recommended Decision CC Docket No. 80–286, FCC 95J–1, adopted December 7, 1995, and released December 8, 1995.

The full text of Recommended Decisions of the Joint Board are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington DC. The full text of this Recommended Decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington DC 20037.

Summary of Recommended Decision

In 1993, the Commission imposed a two-year indexed cap (cap) on the total level of the Universal Service Fund (USF) for the purpose of moderating growth in the USF during the pendency of a planned rulemaking that would address permanent changes in the Commission's rules governing the USF. 58 FR 69239, Dec. 30, 1993. On October 3, 1995, the Commission issued a Notice of Proposed Rulemaking, proposing a six-month extension of the cap in order to continue to moderate growth in the USF while the Commission completed its USF rulemaking. 60 FR 52359, Oct. 6, 1995. The Commission explained that the duration of the cap had been limited to two years in the belief that the USF rulemaking would be completed within that period and that an additional six months would be sufficient to complete the USF rulemaking in view of the progress made to date. *Id.* at 52361. The Commission referred the issues raised in its Notice of Proposed Rulemaking to the Federal-State Joint Board for a Recommended Decision and invited interested parties to propose extensions of the cap for longer or shorter periods than six months. *Id.* at 52360–61.

Following review of comments and reply comments filed by interested parties, the Joint Board recommends that the cap be extended for an additional six months in order to continue to moderate growth in the USF while the USF rulemaking is completed. The Joint Board reiterates its conclusion, stated during earlier deliberations in the same proceeding, that the cap would minimize dislocation should the Commission's ongoing USF rulemaking result in revisions to the USF rules. In response to contentions of the parties that the proposed extension is unnecessary, because recent NECA submissions showed total USF payments in 1996 below the level of the USF as limited by an extension of the cap, the Joint Board explains that no one would be harmed if total claims for USF assistance remain below an extended cap, but that an extended cap would protect against unanticipated and unwanted growth in the fund during the pendency of the USF rulemaking should total claims substantially exceed NECA's current calculations. The Joint Board reiterates its concerns, stated earlier in the proceeding, regarding the pattern of growth and the overall rate of growth in the USF, explaining that moderating the level of the USF during the pendency of the USF rulemaking would serve the public interest.

The Joint Board concludes that six months should be sufficient to complete the USF rulemaking and recommends an extension of the cap for six additional months. The Joint Board rejects arguments to broaden the scope of the USF rulemaking as beyond the scope of the Notice of Proposed Rulemaking.

Ordering Clause

28. For all of the reasons discussed in this Recommended Decision, this Federal-State Joint Board recommends, pursuant to Section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 410(c), that the Federal Communications Commission extend, until July 1, 1996, the current interim rules prescribing an indexed cap on the total level of the Universal Service Fund, 47 CFR 36.601, 36.622.

List of Subjects in 47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–30453 Filed 12–14–95; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286, FCC 95–494]

Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: These regulations enact a six-month extension of the interim indexed cap on the total level of the Universal Service Fund (''USF''). The cap was intended to be effective as an interim measure moderating the growth of the USF during the pendency of a broader rulemaking that revises the Part 36 jurisdictional separations rules governing the USF. The interim cap is scheduled to expire on January 1, 1996. The extension will maintain the interim cap while the rulemaking is completed.

EFFECTIVE DATE: December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Jeanine Poltronieri, (202) 418–0866, Deborah A. Dupont, (202) 418–0873, Common Carrier Bureau, Accounting and Audits Division.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communication Commission's Report and Order in Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, FCC 95–494, CC Docket No. 80–286, adopted December 11, 1995, and released December 12, 1995. The Commission has made the full text of the Order available for inspection and copying during normal business hours in the Commission's Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554, and will publish it in the FCC Record. The full text of the Order may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C., (202) 857–3800.

The Commission adopted the two-year indexed cap for the purpose of moderating growth in the USF during the pendency of a rulemaking that addresses possible permanent changes to the Part 36 jurisdictional separations rules. Previous changes to the rules had involved lengthy phase-in periods to ease the transition for affected carriers. By moderating the growth in the USF and consequently individual carriers' draw from that fund, the interim cap was intended to enable the Commission to implement new rules in a timely manner. The two-year period was selected in the belief that the rulemaking would be completed within that time. The interim cap is scheduled to expire on January 1, 1996.

On August 30, 1994, the Commission released an initial Notice of Inquiry, 59 FR 46606, Sept. 9, 1994, requesting comment on several policy questions relating to the goals and effects of high-cost assistance and on two alternative approaches to the high-cost assistance mechanisms of Part 36. On July 13, 1995, the Commission subsequently released a Notice of Proposed Rulemaking and Notice of Inquiry (''Notice''), 60 FR 46803, Sept. 8, 1995, inviting comment on proposals for revising the Part 36 jurisdictional separations rules. On August 31, 1995, in response to requests from interested parties, the deadlines for comments and reply comments on the issues raised in the Notice were extended four additional weeks. In granting the extension, the Commission explained that the extension would serve the public interest by facilitating more detailed analysis by interested parties, which should prove helpful to the ultimate resolution of the complex issues presented in the Notice.

On October 3, 1995, we issued a notice of proposed rulemaking, (''*Extension Notice*''), 60 FR 52359, Oct. 6, 1995, proposing the extension of the interim cap for an additional six months. We referred the issues raised in the *Extension Notice* to the Joint Board for a recommended decision. In the *Extension Notice*, we noted that we had limited the duration of the interim cap to two years in the belief that two years would be sufficient for the completion of the Part 36 USF jurisdictional separations rulemaking. We also emphasized that because of the complexity of the issues in the rulemaking, the rulemaking would take more time than the anticipated two years to complete, despite diligent effort by the Commission and Joint Board staff and interested parties. The Joint Board has recently released a recommended decision recommending that the Commission extend the interim cap. In view of the scope of the proposals under consideration in the current rulemaking, the process may conclude with new USF rules retargeting assistance. Consequently, the rationale articulated by the Commission in support of the original interim cap during the pendency of the rulemaking remains valid. Given the progress in the rulemaking process to date, the Commission believes that an additional six months should be sufficient to complete it and that the extension is essential to allow full analysis of the complex issues raised in this rulemaking. We believe that extending the interim cap for an additional six months will allow growth in the USF to be moderated while the rulemaking revising the USF jurisdictional separations rules is completed. To continue to moderate the growth of the USF effectively during the entire rulemaking period, the six-month extension must be effective by the January 1, 1996, expiration of the interim cap. In addition, the Commission has reserved the discretion to consider a longer extension of the interim cap, without further notice, if it becomes clear that the rulemaking will not be completed by July 1, 1996, on the basis of the record already developed.

These rule changes will become effective immediately upon their publication in the Federal Register. Pursuant to 5 U.S.C. 553 (d)(3) the Commission found good cause to have the rule amendments take effect immediately upon publication in the Federal Register. The revised rules must be effective in less than 30 days so that the extended interim cap is in place by the expiration date of the interim cap, January 1, 1996.

Accordingly, pursuant to Sections 1, (4)(i), 221(c), and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 221(c), and 410(c), it is ordered That Part 36 of the Commission's Rules and Regulations, 47 C.F.R. Part 36, Subpart F—Universal Service Fund, is amended as shown in the rule changes below.

List of Subjects in 47 CFR Part 36

Communications common carriers, Jurisdictional separations procedures, Reporting and recordkeeping requirements, Telephone, Universal System of Accounts.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 36 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: 47 U.S.C. Secs. 151, 154(i) and (j), 205, 221(c), 403 and 410.

2. Section 36.601 is amended by revising paragraph (c) to read as follows:

§ 36.601 General.

* * * * *

(c) During an interim period commencing on January 1, 1996, and terminating on July 1, 1996, the annual amount of the total Universal Service

Fund shall not exceed the amount of the total Universal Service Fund for the immediately preceding calendar year, increased by a rate equal to the rate of increase in the total number of working loops during the calendar year preceding the June filing. The total Universal Service Fund shall consist of the Universal Service expense adjustments, including amounts calculated pursuant to §§ 36.612(a) and 36.631. The rate of increase in total working loops shall be based upon the difference between the number of total working loops on December 31 of the year preceding the June filing and the number of total working loops on December 31 of the second year preceding that filing, both calculated pursuant to § 36.611(a)(8).

3. Section 36.622 is amended by revising the first sentence of paragraph (a) and paragraph (c) to read as follows:

§ 36.622 National and study area average unseparated loop costs.

(a) National Average Unseparated Loop Cost per Working Loop. Except as provided in paragraph (c) of this section, this is equal to the sum of the Loop Costs for each study area in the country as calculated pursuant to § 36.621(a) divided by the sum of the working loops reported in § 36.611(a)(8) for each study area in the country.

* * *

* * * * *

(c) During an interim period commencing on January 1, 1996, and terminating on July 1, 1996, the National Average Unseparated Loop Cost per Working Loop shall be the greater of:

(1) The amount calculated pursuant to the method described in paragraph (a) of this section; or

(2) An amount calculated to produce the maximum total Universal Service Fund allowable pursuant to § 36.601(c).

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Federal Register

Friday
December 15, 1995

Part V

The President

Proclamation 6858—Wright Brothers Day

Federal Register
Vol. 60, No. 241
Friday, December 15, 1995

Presidential Documents

Title 3—

The President

Proclamation 6858 of December 13, 1995

Wright Brothers Day, 1995

By the President of the United States of America

A Proclamation

Ninety-two years ago, Orville Wright manned the first sustained and controlled, machine-powered flight in an airplane he designed and built with his brother Wilbur. This extraordinary journey, though only 12 seconds long, was the first great achievement of a partnership that revolutionized aviation and made remarkable contributions to aerodynamics, mechanical engineering, and practical flight techniques. The Wright brothers' pioneering efforts remain enduring examples of American ingenuity and perseverance.

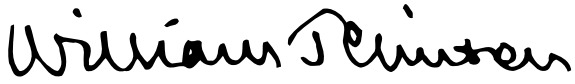
Today, the United States aviation industry helps to drive our economy and provides business and recreational opportunities to our citizens that were unthinkable just a century ago. Our reliance on air transit grows each year, challenging the aviation community and the Federal Aviation Administration (FAA) to meet new safety and operational demands.

Our air transportation system, already the safest and most efficient in the world, continues to improve. In fact, efforts are underway to craft reforms that enhance the efficiency of the FAA so that America's leadership in air transportation, begun with the Wright brothers' historic flight on December 17, 1903, can continue well into the next century.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated December 17 of each year as ''Wright Brothers Day'' and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 17, 1995, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of December, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.



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