2–27–96
Vol. 61 No. 39
Pages 7193–7406

federal register

Tuesday
February 27, 1996

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

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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: March 12, 1996 at 9:00 am and March 26, 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)

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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.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 404

RIN 0563–AB13

Noninsured Crop Disaster Assistance Program

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') hereby revises and makes final its regulations to provide a noninsured crop disaster assistance program (''NAP'') to protect producers of crops for which insurance is not available. NAP provides a level of protection that, in most respects, is comparable to the catastrophic risk protection program offered to producers of insurable crops.

EFFECTIVE DATE: February 22, 1996.

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the Regulatory Impact Analysis to the noninsured crop disaster assistance program, contact Diana Moslak, Federal Crop Insurance Corporation, Regulatory and Procedural Development Staff, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 720–0713.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 2000.

This rule has been determined to be ''significant'' for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (''OMB'').

Regulatory Impact Analysis

A Regulatory Impact Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that the final NAP rule incorporates three significant changes when compared with the interim rule. First, the final NAP rule defines an ''area'' for NAP triggering purposes as at least 320,000 acres, at least $80 million crop value, or the county, as determined by the Manager, FCIC. The interim rule used only the 320,000-acre and $80 million value mechanisms. Second, the final rule allows different types or varieties of a crop or commodity to be treated as separate eligible crops. Previously, all types and varieties were treated as a single eligible crop. Third, the interim rule only provided NAP coverage for seeded forage crops. The final rule expands NAP coverage to include both seeded and native forage, except on state and Federal lands where NAP coverage is restricted to seeded forage.

Increasing the choices for defining NAP areas by adding a ''county-level'' option, providing greater flexibility in the definition of a crop, providing coverage for both seeded and native forage, and including the retroactivity provisions will increase NAP outlays. Some offset is provided by language that requires a five-producer minimum in the definition of a NAP area. The expected annual outlays under these regulations are about $95 million to $145 million, averaging $120 million. The cost associated with the forage issue depends on the future of the Livestock Feed Program, as discussed in the analysis.

Although expected to result in higher Federal outlays, these changes are designed to improve the equity in NAP payments among growers. Experience in 1995 and interim rule comments indicate that various areas and crop types would not receive NAP payments under the interim rule, despite significant losses. In addition, some producers may not have received payments due to perils that were omitted from the crop insurance policy.

The improvements in equity are associated with changes in administrative costs. Program administration will likely be easier for FSA offices with the county designation added to the list of area definition options. However, additional administrative costs will be associated with the determination of losses by crop type, as well as the determination of losses qualifying for payment due to NAP coverage of both seeded and native forage.

Paperwork Reduction Act of 1995

This final rule amends the information collection requirements previously approved by OMB under OMB control number 0563–0016 through May 31, 1998. This rule increases the producer (respondent) audience participation due to increased availability for NAP assistance for seeded and native forage. This coverage excludes native forage on any federal or state owned lands, and any crops for which insurance is available in the county, that is affected by natural disaster and is not insurable under the producer's crop insurance policy. All of the forms cleared under OMB control number 0563–0016 represent the required forms to determine eligibility and losses qualifying for payment due to NAP coverage.

Revised reporting estimates and requirements for usage of OMB control number 0563–0016 will be submitted to OMB for approval under the provisions of 44 U.S.C. 35. Public comments are due by April 22, 1996.

The title of this information collection is ''Noninsured Crop Disaster Assistance Program, Claim For Indemnity, Field Inspection And Appraisal Requirements.'' The information requested is required for proper administration of the Noninsured Crop Disaster Assistance Program. The burden for the NAP Program is reported on an as needed basis when disaster situations arise. The reporting burden for this collection of information is estimated to average 42 minutes per response for each of the 8.5 responses from approximately 15,172,500 respondents. The total annual burden on the public for this information collection is 10,620,750 hours.

The comment period for information collections under the Paperwork Act of 1995 continues through April 22, 1996. Comments are requested on the

following aspects of the Information Collection: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Bonnie Hart, Advisory and Corporate Operations Staff, Regulatory Review Group, Farm Service Agency, U.S. Department of Agriculture, Washington, D.C. 20250. Copies of the information collection may be obtained from Bonnie Hart at the above address. Telephone (202) 690–2857.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. Most producers will be able to certify to their historical production levels at the time of application based on existing records, or they may elect to base their initial coverage on transitional or assigned yields. The amount of data collected from applicants will only be that needed to establish an acceptable yield, determine the number of acres planted, and determine the eligibility of the producer, crop, and acreage. The information required and time of collection is statutory. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order 12372

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

Executive Order 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 780 and 7 CFR part 11, must be exhausted before any judicial action may be brought regarding the provisions of this regulation. The provisions of this rule that are not more restrictive than the interim rule will be effective retroactive to May 18, 1995, the date of publication of the interim rule. The provision in § 404.13 regarding the requirement that an ''area'' consist of a minimum of five producers before it can be approved is not effective retroactively.

Environmental Evaluation

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 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, FCIC 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, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

Background

On October 13, 1994, the Federal Crop Insurance Act was amended by the Federal Crop Insurance Reform Act of 1994 (''Act''). This regulation provides the provisions necessary to carry out the noninsured crop disaster assistance program (''NAP'') requirements of the Act. NAP replaces the Disaster Payment Program (7 CFR part 1477) and the Tree Assistance Program (7 CFR part 1478).

On May 18, 1995, FCIC published an interim rule in the Federal Register at 60 FR 26669 to add provisions to implement NAP. Following publication of that interim rule, the public was afforded 60 days to submit written comments, data, and opinions. On August 7, 1995, FCIC extended the comment period for the NAP regulations to August 18, 1995 (60 FR 40055). The comments received and FCIC responses are as follows:

Comment: § 404.5(b) Thirty-six comments received from state FSA offices recommended that section 404.5(b) be amended to allow the Administrator of FSA to review and approve or disapprove the state FSA committee recommendation of area eligibility.

Response: The Act specifies that FCIC will make determinations of area eligibility. The provision will not be changed.

Comment: § 404.5(c) Thirty-six comments received from state FSA offices recommended that section 404.5(c) be amended to allow county and State FSA committees to establish yields and prices.

Response: The Act specifies that FCIC shall establish yields and prices. The provision will not be changed.

Comment: § 404.7(e) Five comments, two from trade associations and three from other interested parties, were received suggesting that the definition of ''Aquacultural species'' contained in section 404.7(e) be changed to allow aquaculture on lands that are not

privately owned or in waters that are not a ''controlled environment.'' One comment from an interested party requested clarification of ''private property in water in a controlled environment'' stating that fish are grown for human consumption in privately owned net pens (property) in sea water which is controlled by the net pens but owned by the nation or state. The state leases the bedlands under the cages to the private operator so that the cages can be set in place and moored. FCIC was urged to reconsider the proposed definition to explicitly allow caged fish and shellfish operations on state leased lands and waters.

Response: The definition provides for coverage of aquaculture that is produced in a controlled aquacultural environment. A controlled environment may include net pens on leased lands provided that the lease vests in the lessee all the rights and benefits of ownership of the leased land and does not merely provide a license to gather the aquacultural species found in the pen. Therefore, the provision will not be changed.

Comment: § 404.7(e) Two comments were received, one from a state government office and one from a trade association, stating that the definition of ''Aquacultural species'' excludes ornamental fish and aquatic plant industries from the NAP. The state government official recommended that section 404.7(e) be changed to include nonfood farm-raised fish and aquatic plants.

Response: The Act limits NAP to crops produced for food or fiber. The provision will not be changed.

Comment: § 404.7(l) Four comments received from trade associations stated that many floricultural, nursery, turfgrass sod, and tree crops are produced in ''crop years'' ranging over several ''calendar years.'' The trade associations suggested that the definition of ''crop year'' contained in section 404.7(l) be amended to clarify that losses occurring in a given calendar year will be covered even though the plant may not be harvested (or be ready to harvest) during that given year.

Response: The definition has been modified to clarify and explain how crops produced over multiple calendar years will be eligible for NAP.

Comment: § 404.7(n) Four comments received from trade associations requested clarification of the definition of ''Eligible crop'' contained in section 404.7(n) which states in part that ''In the case of a crop that historically has multiple plantings in the same crop year that are planted or are prevented from being planted on the same or different acreage will be considered different crops for determining NAP payments. This does not apply to a replacement crop.'' The trade associations stated that it is their interpretation that this provision is to provide that a loss is ineligible for NAP coverage even if the grower harvests other plantings in the same year.

Response: The definition has been modified to clarify that each planting of a crop with multiple plantings in the same crop year will be considered as a separate crop eligible for NAP payments.

Comment: § 404.7(p) One comment received from an USDA agency suggested that the definition of ''FCIC'' contained in section 404.7(p) be changed to reflect FCIC as a separate and distinct corporate entity.

Response: By definition, FCIC is a separate and distinct corporate entity. Therefore, no change is required.

Comment: § 404.7(q) One comment received from a trade association suggested that the definition of ''good farming practices'' contained in section 404.7(q) be changed to include alternative farming practices and innovations that are supported by research or practice appropriate to the type of farming undertaken.

Response: The definition allows alternative farming practices and innovations that are supported by data from the Cooperative State Research, Education, and Extension Service (CSREES). Therefore, no change is required.

Comment: § 404.7(r) and (ee) One comment was received from a state FSA office regarding the definitions for ''Harvested'' which excludes harvest by grazing except for ''Seeded pasture'' which is limited to ''an annual crop intended for use as grazing only by domestic animals,'' contained in sections 404.7(r) and 404.7(ee), respectively. The state FSA official expressed concern that these definitions exclude nearly all forage crops harvested by grazing. The state FSA official suggested that eligibility for noninsured crop disaster assistance be based on crop yields and losses, not the method of harvest, and that grazing not be excluded from the ''Harvest'' definition.

Response: With respect to the definition of ''Harvested,'' the intent is to define the term to include only those means of removing the crop that result in costs being incurred by the producer. Section 404.9(c) authorizes FCIC to reduce the NAP payment as a result of costs not incurred by the producer, such as harvesting. Because grazing does not result in a cost to the producer, it is not considered as ''harvested''. With respect to the definition of ''Seeded pasture,'' FCIC has changed the term to ''Forage'' to include both seeded and native forage crops that are harvested or grazed. Grazed forage will be eligible for NAP payments at reduced rates. Forage is defined as land covered with grass or other vegetation, produced under such range management practices as are necessary to sustain sufficient quality and quantity of grass or vegetation each year to be suitable for grazing or mechanical harvest to feed livestock in a commercial operation. NAP coverage for forage on any Federal or state owned lands is restricted to seeded forage.

Comment: § 404.7(r) One comment received from a congressional office stated that the definition of ''Harvested'' contained in section 404.7(r) is silent on disaster assistance to producers of crops that are harvested over multiple years and recommended a provision be added to embrace disaster assistance for crops harvested over multiple years.

Response: The paragraph has been modified to clarify when crops produced and harvested over multiple years are considered harvested.

Comment: § 404.7(v) Two comments received from aquaculture producers recommended that the NAP provisions cover loss of fish due to storms causing low pressure and heaving, hot humidity; cloudy weather causing low oxygen; high temperatures causing loss of appetite; drought causing water evaporation and stale water; diseases; and failure of equipment or down power lines due to lightening, storms, or wind stopping the aeration of oxygen.

Response: To qualify for NAP assistance, the Act provides that losses of the noninsured commodity be attributable to drought, flood, or other natural disaster, as determined by the Secretary. The definition of natural disaster has been modified to include eligible crop losses that may be attributable to damaging weather or adverse natural occurrences and related conditions.

Comment: § 404.7(y) Two comments were received regarding the definition of ''Prevented planting'' contained in section 404.7(y) as follows:

(1) One comment received from a USDA state office requested clarification of the definition of ''Prevented planting'' contained in section 404.7(y) which states in part, ''The natural disaster that caused the prevented planting may occur prior to the planting period for the crop in the area, but must not occur earlier than the planting period for such crop the prior crop year.'' The state government official suggested that section 404.7(y) be

amended to specify whether a natural disaster that occurred in one year and carried over into the next year will receive NAP coverage.

(2) One comment received from a trade association stated that the requirement that ''most producers in the surrounding area must have also been unable to plant the eligible crop in order for a producer to be eligible for a NAP payment'' may impose an additional requirement not supported by the Act especially when a producer is otherwise eligible for NAP benefits and can show that planting was not feasible due to a natural disaster. The trade association suggested that this requirement be deleted from the definition of ''Prevented planting.''

Response: The definition has been modified to allow for the coverage of prevented planting when the cause of the prevented planting occurred after the final planting date of the previous crop year and before the final planting date of the crop year for which a NAP payment is requested. For crops with multiple plantings in 1 crop year, the cause of the prevented planting must occur after the planting of the previous planting period and before the final planting date of the current planting period. Further the paragraph has been amended to eliminate the requirement that most producers in the surrounding area must have also been unable to plant the eligible crop or other crops during the same planting period in order for a producer to be eligible for a prevented planting payment.

Comment: § 404.9(c) Five comments were received regarding section 404.9(c) which specifies that ''FCIC will adjust the NAP payment rate for crops that are produced with significant and variable expenses that are not incurred because the crop acreage was prevented from being planted or planted but not harvested'' as follows:

(1) Four comments received from trade associations suggested section 404.9(c) be clarified by providing the criteria to be used in determining potential reductions in the NAP payment rate for costs not incurred by the producer as a result of the crop acreage being prevented from planting or planted but not harvested The trade associations also suggested that the regulations specify the person or office ultimately responsible for making the NAP payment rate reduction determinations as it relates specifically to specialty crops.

(2) One comment received from a USDA agency suggested that the rule include specifics for calculating the adjustment in the NAP payment rate and that the method used be similar to those included in the 1994 *ad hoc* disaster program.

Response: The Act requires the development of a payment rate for a crop that is produced with a significant and variable harvesting expense that takes into consideration the stage of the crop at the time of loss; for example, not planted, planted but not harvested, or harvested. Because of all the variations that exist between crops, it is not possible to list all the factors that affect the costs associated with producing all crops. FCIC will approve all variable payment factors whether applicable to specialty or other crops. The method used in determining payments under the 1994 *ad hoc* disaster program will be taken into consideration.

Comment: § 404.11(a) Fifty-four comments, one from a congressional office, fourteen from producers, one from a trade association, one from a county FSA committee, one from a state FSA committee, and thirty-six from state FSA offices, were received requesting section 404.11(a) be changed to allow NAP benefits for seed crops, specifically grass, clover, alfalfa and legume seed crops and any other crop grown commercially for seed. The one comment received from the state FSA committee stated that legislation does not specifically exclude seed crops which are ultimately used for the production of crops for human consumption or livestock feed and, therefore, should be added to the list of crops eligible for NAP benefits.

Response: The Act specifies that the term ''eligible crop'' will include each commercial crop or other agricultural commodity (except livestock) that is produced for food or fiber. Seed crops are not produced for food or fiber. Further, the Act specifically included the exceptions to the food or fiber requirement. Crops not specifically included in the exception are not eligible for NAP. The provision will not be changed.

Comment: § 404.11(a) One comment received from a producer suggested that section 404.11(a) be changed to allow NAP payments by crop type rather than treating as a single eligible crop all types and varieties of a crop. This producer stated that the farmer who raises several types of a crop, as opposed to a farmer who raises only one type, may not qualify for a NAP payment if one type does not meet the 50 percent individual loss requirement. The producer also questioned whether crops such as tomatoes, basil, or flowers grown in a greenhouse would be eligible for NAP because pumpkins used for decoration are not covered by NAP, but flowers are, and whether indian corn, strawberry corn, or blue corn are eligible crops under the NAP. The producer recommended all crops and corn grown outside be eligible for NAP payment.

Response: The paragraph has been revised to allow FCIC to treat different types and varieties of a crop or commodity as separate eligible crops provided they have significantly different prices or yields. The determination of whether a crop is eligible for NAP payments is not based on whether a crop is grown indoors or outdoors. The Act specified that crops grown for food or fiber, or included on the list of exceptions, are eligible regardless of where grown. This provision will not be changed.

Comment: § 404.11(a)(3) One comment received from a timber producer requested section 404.11(a)(3) be changed to include walnut trees planted for timber purposes as a crop eligible for NAP benefits.

Response: FCIC cannot expand the list of crops eligible for NAP payments beyond those crops designated by the Act. The provision will not be changed.

Comment: § 404.11(a) One comment was received from a FSA district director regarding sections which specify that eligible crops are those crops grown for food and fiber and then lists additional crops such as floriculture, ornamental nursery crops, Christmas trees, turfgrass sod, and industrial crops as eligible crops for NAP benefits. The FSA district director suggested that all of the exceptions to the crops produced for food or fiber be deleted or the provisions be broadened to include all crops produced for commercial purposes.

Response: The named crops, in addition to crops produced for food or fiber, are specified by the Act and, therefore, must be included. Further, the list of named crops cannot be expanded beyond those specified in the Act.

Comment: § 404.11(b)(3) One comment was received from a USDA agency regarding section 404.11(b)(3) which provides for NAP payments in the case of delayed plantings caused by a natural disaster. The USDA agency official states that since the Act provides ''that an eligible crop means each commercial crop or other agricultural commodity (except livestock) for which the Catastrophic Risk Protection (CAT) Plan of Insurance is not available, and that is produced for food or fiber,'' there are no statutory exceptions. The USDA agency official recommends that if a crop is insurable under CAT, there should be no exceptions to cover losses from delayed plantings for NAP crops.

Response: The commentator may have misinterpreted the provision. A crop

that is not insurable under CAT because the natural disaster causing the damage was not an insurable cause of loss under CAT may be covered for the natural disaster under NAP, provided that all the other eligibility requirements are satisfied.

Comment: § 404.11(b)(6) Four comments were received from trade associations requesting FCIC to clarify the exemption contained in section 404.11(b)(3). The trade associations stated that the Clean Water Act and the swampbuster provisions provide exemptions from many of the features of current wetlands policy that affect agriculture. Perennial specialty crops were excluded from exemption resulting in discrimination against a large segment of American agriculture without any environmental benefit or preservation of wetlands. To avoid a similar situation, the trade associations requested the FCIC to clarify the exemption contained in this section to ensure past problems are not repeated and that specialty crops are not inappropriately excluded from NAP benefits.

Response: The regulations at section 12.5 of this title, incorporated into this rule by reference, contain the exceptions authorized by the Secretary for all USDA programs. It would be inappropriate for a clarification of section 12.5 to appear in this rule.

Comment: § 404.13 Sixty-three comments, fifteen from producers, three from trade associations, three from state government offices, two from congressional offices, one from a county FSA office, one from a county FSA committee, one from a state FSA committee, one from a district director, and thirty-six from state FSA offices, were received regarding section 404.13 which specifies the minimum area of 320,000 acres or a geographical area with a minimum average value of at least $80 million for all crops produced annually and other interrelated provisions contained in section 404.19.

(1) Fifteen comments received from producers, two from trade associations, three from state government offices, one from a congressional office, one from a county FSA office, one from a county FSA committee, one from a state FSA committee, one from a district director, and thirty-six from state FSA offices stated that the minimum area requirement (320,000 acres or $80 million value) contained in section 404.13 coupled with the 35 percent area-wide yield loss requirement contained in section 404.19(c) is excessively large.

(2) One comment received from a producer recommended elimination of the area stating that if a small farm is wiped out by hail damage and the 35 percent area loss does not trigger, the farmer could possibly lose 100 percent of his crop with no compensation. One FSA district director stated that a producer would not be covered under the NAP for crop losses resulting from isolated storms such as hailstorms or thunderstorms. The FSA district director also stated that NAP discriminates against producers of noninsured crops because of the unavailability of insurance coverage in some states.

(3) Thirty-six comments received from state FSA offices recommended elimination of the area if statutorily permissible. If not statutorily permissible, the state FSA offices recommended the county FSA committee with state FSA committee concurrence be given the authority to delineate an area (with no minimum acreage) based on the agriculture in the county and the natural disaster affected area. One of the state FSA offices recommended using certain towns in determining the disaster area and states and suggested that ''no disaster be smaller than a single town and none larger than where the disaster actually occurred.'' Another state FSA office stated that the 35 percent area loss requirement is not comparable to the catastrophic level of protection and recommended a smaller minimum area size or elimination of the area and reconsideration of the 35 percent area loss requirement.

(4) One comment received from a producer recommended the regional FSA office define an area.

(5) One comment received from a producer recommended that FSA committees decide if there is a payable loss.

(6) Three comments received from state government officials, one from a county FSA office, and one from a state FSA committee recommended the area be modified to provide assistance to localized areas that cannot meet the minimum area and area eligibility requirements.

(7) One comment received from a county FSA committee recommended the NAP be administered more like the CAT whereby eligibility is on an individual unit basis.

(8) One comment received from a trade association stated that the current provisions for defining an ''area'' are too burdensome. The trade association suggested the ''area'' be defined as a county with added exceptions to address situations wherein part of one county and part of another county could constitute an ''area.''

(9) One comment received from a congressional office stated that producers should not be denied coverage because an insufficient number of producers in the vicinity suffered similar losses. The comment suggested that section 404.13(d) be changed to allow eligibility for NAP benefits to be determined by local circumstances defined by the county FSA committee so as not to use acreage to deny NAP coverage for small diversified agricultural operations.

Response: The Act requires the average yield in the ''area'' be reduced by at least 35 percent before a crop is eligible for NAP payments. An area cannot be defined as a farm or town and comply with the intent of NAP, which is to provide protection against widespread disasters, not individual losses. The requirement that there be an area affected by a disaster and the amount of loss cannot be changed administratively. However, in response to comments received, the provision will be amended for clarity and changed to include ''county'' as an option when defining the area. In order to maintain program consistency, FCIC will continue to determine the expected area yield, the approved yields, and approve the ''area'' designation. To ensure program integrity, this section is also being amended to require that an approved area within the United States consist of a minimum of five producers of crops for which the area is designated.

Comment: § 404.15(b) One comment received from a trade association suggested section 404.15(b) be expanded to include special yield determination examples for organic and nonorganic and sustainable and traditional farming practices.

Response: FCIC is authorized to make yield adjustments based on different farming practices, which would include organic and nonorganic. Irrigated and nonirrigated are merely used as examples. However, the provision will be revised to avoid the perception that only irrigated and nonirrigated practices shall be considered.

Comment: § 404.15(d) One comment was received from a state government official regarding section 404.15(d) which states in part that ''Approved yields for the eligible crop will be based on the producer's actual production history in accordance with the provisions of 7 CFR part 400, subpart G.'' The state government official states that to require the submission of 4 consecutive years production for producers who may have had a disaster in 2 consecutive years is not fair. The state government official recommended

that section 404.15(d) be amended to allow a producer who has more than 4 consecutive years of production records on noninsured crops to submit production records for any 4 of those years.

Response: The Act requires that approved yields be based on the producers actual production history over a period of at least the previous 4 consecutive years of production records and not more than 10 consecutive years of production records. Producers can only use assigned yields when records are not available. If the producer has had a disaster, production records will be available. Therefore, this provision will not be changed.

Comment: § 404.15(g) Three comments were received regarding section 404.15(g) as follows:

(1) One comment received from a producer recommended section 404.15(g) be amended to allow the FSA committee to determine the production records a producer must submit.

(2) One comment received from a trade association recommended section 404.15(g) be amended to include some intent to defraud or deceive when assessing criminal and civil actions against the producer for failure to provide adequate records.

(3) One comment was received from a state FSA committee recommending that section 404.15(g)(2) be changed to delete for use as adequate records ''contemporaneous measurements, truck scale tickets, contemporaneous diaries, etc.'' Justification for this change was that such production information is not an adequate record for use in yield determination, is not verifiable, and makes administering the program more difficult. The state FSA committee suggested that unless the producer can provide verifiable production evidence, this production information not be considered as an adequate record for use in yield determination.

Response: Producers are not required to submit a specific type of record. The rule simply provides examples of record that may be considered acceptable to FCIC for the purposes of substantiating claims for NAP payments or yield certification. FCIC will consider all available sources of information including recommendations from county and state FSA committees; however, FCIC will make the determination as to whether the documentation provided is adequate. The applicable criminal and civil sanctions have an intentional or wilful requirement with respect to the providing of false or inaccurate information, including a false claim that records exist. In response to the comments, the paragraph has been revised to require the producers to submit records that are acceptable to FCIC. If the information is not reliable or verifiable, the records will not be considered acceptable. No other change to the provision will be made.

Comment: § 404.17(b)(6) One comment was received from a producer recommending section 404.17(b)(6) be changed to require the producer to report planting dates only for those crops planted after the final acreage reporting date and to allow the county FSA committee to determine whether a producer planted late.

Response: It has been determined that if the acreage report does not contain a certification as to the date the crop being reported was planted, it will be difficult to determine if the crop was planted after the final acreage reporting date or final planting date established for insurance purposes. Information as to the date of planting should be readily available when the acreage report for the crop is filed. Accordingly, the paragraph is not changed.

Comment: § 404.17(b)(8) One comment was received from a producer recommending section 404.17(b)(8) be changed to allow a producer to prove yields at the application for NAP benefits date rather than at acreage reporting date.

Response: Because NAP payments are based on the actual production history of the producer, it is necessary to require producers to annually report the acreage and production of crops. Further, such information will be used to develop insurance products for those crops for which insurance is currently not available. Producers unable to provide adequate documentation of their yield will have a yield assigned in accordance with section 519 of the Act.

Comment: Two comments from trade associations were received regarding section 404.19(a). The comments are as follows:

(1) One comment received from a trade association suggested section 404.19(a) address the standards the Secretary will use in determining the natural disasters eligible for NAP payments. The trade association raises this issue in light of complaints that sustainable and alternative practices have been treated unfairly in the past.

(2) One comment received from a trade association suggested section 404.19(a)(3) address the standards that will be used to exclude NAP assistance for the failure of the producer to follow good farming practices. According to the trade association sustainable and alternative agricultural practices are frequently and erroneously labeled as not ''good farming practices'' simply because they may be different from the traditional approach in the area. The trade association suggested section 404.19(a)(3) provide specificity on this point and provide producers with guidance as to what evidence they should present in order to show that their alternative methods were appropriate.

Response: The definition of ''natural disaster'' has been clarified to include both weather related and other natural occurrences or their consequences which may cause or accelerate the destruction or deterioration of a crop. Further, the definition of ''good farming practices'' allows alternative farming practices and innovations that are supported by data from the Cooperative State Research, Education, and Extension Service (CSREES). Therefore, a change is not required.

Comment: § 404.19(c)(1) Six comments, five from trade associations and one from a state FSA committee, were received regarding section 404.19(c)(1) which specifies that ''The quantity will not be reduced for any quality consideration unless a zero value is established.'' One trade association recommended section 404.19(c)(1) be changed to include quality adjustment for hay crops in the disaster calculation for NAP payment. Four trade associations recommended FCIC develop a more flexible approach that focuses on the value of the damaged but not ''dead'' crop and whether the crop will be marketable in the future at a reasonable price. The state FSA committee recommended the same quality loss guidelines provided under CAT be also available to producers under the NAP.

Response: Many of the crops eligible for quality adjustments under the crop insurance program have generally accepted grades and standards upon which to base such adjustments. There are no such generally accepted grades and standards for most NAP crops. Therefore, no change is made.

Comment: Seven comments, one from a state government official, one from a producer, one from a FSA district director, and four from trade associations, were received regarding section 404.19(c)(2). The comments are as follows:

(1) One comment was received from a state government official regarding section 404.19(c)(2) which states that ''A prevented planting NAP payment will be made if the producer is prevented from planting more than thirty-five percent (35%) of the total eligible acreage intended for planting to the eligible crop.'' The state government

official recommended the provision be changed to specify the percentage of guarantee that will be paid to a producer. The state government official suggested the guarantee be specified at a rate of not less than 65 percent for producers who are prevented entirely from planting a crop.

(2) Two comments, one from a producer and one from an FSA district director, were received regarding section 404.19(c)(2)(A) which states that ''Eligible crop acreage will not exceed 100% of the simple average of the number of acres planted to the crop by the producer in the loss area during the years used to determine the approved yield, unless FCIC has previously agreed in writing to approve acreage exceeding this limit.'' The producer requested FCIC reconsideration of this provision in light of crop rotations and the planting of other crops. The FSA district director stated the provision discriminates against producers of noninsured crops because a producer of an insured crop is not subject to this restriction.

(3) Four comments were received from trade associations regarding section 404.19(2)(D)(i) which specifies that NAP payments for prevented planting will not be available for ''tree crops and other perennials.'' The trade associations stated it is arbitrary and capricious to exclude turfgrass sod, floricultural, and ornamental nursery crops as perennials ineligible for NAP prevented planting. Because many of these crops can be produced in a period ranging from a few months to several years, depending upon the area of the country and a wide variety of agronomic considerations, the trade associations suggested a more flexible approach be developed by FCIC.

Response: Section 519(d)(1) of the Act limits the production eligible for payment to less than 50 percent of the producer's approved yield. Section 404.23 is added to specify how losses will be paid to producers eligible for prevented planting or reduced yield NAP payments. In § 404.19, paragraphs (c)(2) (A), (B), and (C) have been deleted and acreage which was prevented from planting due to a natural disaster, and the producer can prove was intended to be planted, may be eligible for NAP payments. Tree crops and perennials may be eligible for prevented planting NAP payments provided the producer can prove adequate resources were available, or on order, to plant, grow, and harvest the crop, if applicable.

Comment: § 404.21(a). Two comments, one from a state FSA committee and one from a trade association were received regarding section 404.21(a) which specifies that ''Any person with a share in the eligible crop who would be entitled to a NAP payment must make application and provide a notice of damage or loss within 15 calendar days after the occurrence of the prevented planting (the end of the planting period) or damage to the crop.'' The state FSA committee stated that the 15-day notification is too limiting and suggested the provision be changed to allow for a 30- or 45-day notification period. The trade association also stated that the 15-day notice of damage was too restrictive.

Response: The time period for providing notice of loss is comparable to the insurance requirement and allows for timely inspection of the damaged crop, if necessary. Longer time periods may make it difficult to accurately assess the extent of the damage and prevent the producer from destroying the crop and putting the acreage to another use.

Comment: § 404.27(a). One comment received from a state government official suggested that section 404.27(a) be amended by replacing the words ''erroneously represented'' with the words ''knowingly misrepresented''. Justification for this change was that the provision implies that a farmer who unwittingly benefited from another's action could face cruel and unduly harsh penalties due to acts of which he or she was totally unaware.

Response: The paragraph has been clarified to replace ''erroneously represented'' with ''misrepresented.'' Further, the paragraph has been revised to require that producers ''knowingly'' adopt, participate, or benefit from a scheme or device to conform to the requirement of the Act.

Comment: § 404.27(c)(2). One comment received from a trade association suggested section 404.27(c)(2) be amended to include the ''knowing'' or ''intentional'' submission of false information.

Response: Since section 404.27(a) has already been revised to require a ''knowing'' adoption, participation, or benefiting from the scheme or device, a change is not required here.

Comment: § 404.29(a). One comment received by a trade association suggested section 404.29(a) include a provision to provide for refund of monies by the producer as a result of an FCIC error and that such provision not require the producer to pay interest or pay the money back ''on demand.'' The trade association suggested that after a set period of time FCIC should not be allowed to recompute and correct its own mistakes and should within that set period of time establish an equitable repayment schedule agreed upon by the parties involved.

Response: There is a statute of limitation that governs the period within which FCIC can bring an action to recover funds that are owed to it. Further, since NAP is a government funded program, payments cannot be made or retained that are not authorized by law.

Comment: § 404.33. Two comments, one from a state government official and one from a trade association, were received regarding section 404.33 as follows:

(1) One comment from a state government official suggested that this section be amended by removing the words ''The appeal, reconsideration, or review of all determinations made under this part . . .'' and inserting in its place the words ''Any determination made by the agency, which the producer believes to be adverse to his or her participation in the program, can be appealed, reconsidered, or reviewed by the agency.'' The state government official also suggested that the words ''must be in accordance with part 780 of this title or the regulations promulgated by the National Appeals Division, whichever is applicable'' be replaced with a new paragraph to read as follows:

''All appeals will be heard under the new regulations that are published for the National Appeals Division, including the right of a producer to participate in mediation with the agency. If the appeal is in a state with a certified mediation program, then the agency must notify the producer in writing, of his or her right to mediation.''

(2) One comment received from a trade association suggested this section include appeal rights through the National Appeals Division on whether the designation of an area is appealable. The trade association also suggested that these regulations provide more specific guidance in keeping with the National Appeals Division regulations particularly notice provisions, timeframes, and any informal appeal options.

Response: Since the National Appeals Division has specific jurisdictional requirements, no change is necessary. Further, the Act requires that informal appeal processes in effect on the date of its enactment remain in effect and producers are provided their choice of forums. Mediation is available under 7 CFR part 780. Rules of general applicability are not appealable and the area designation is a rule of general applicability. Since the notice, timeframe, and informal appeal options

are specifically stated in the referenced part and regulation, it would be redundant to include them here.

Comment: One comment received from an USDA agency recommended that participation in the NAP be linked to other price support, production adjustment, conservation programs, and the CAT program. Justification for this change was to provide equitable treatment to all producers and to be consistent with the Act which requires the FCIC to establish a NAP program to provide coverage equivalent to the CAT program.

Response: The Agency determined that it would not require linkage between CAT and NAP unless specifically required by the Act.

Comment: One comment received from a USDA agency recommended an administrative fee similar to the CAT program be charged producers prior to the time they receive benefits under the NAP. Justification for this charge was to ensure fair and equitable treatment of all producers and to help cover administrative costs for delivering the program.

Response: The comment cannot be implemented because the Act does not authorize collection of fees from NAP producers.

Comment: One comment received from a USDA agency suggested that a producer should have a history of growing the crop in order to receive NAP benefits. Justification for this change was to ensure that a producer has the knowledge, expertise, and intent to produce the crop.

Response: This suggestion would have the affect of penalizing new producers. FSA's operating procedure delegates to the county committees the responsibility of determining that good farming practices were used in producing the crop. If good farming practices were not used or the producer cannot prove that a crop was intended for planting, the producer is ineligible for NAP payments.

Comment: One comment received from a USDA agency recommended limits be placed on producers from receiving NAP benefits on acreages that substantially increased over the previous year's planting. Justification for this change was to help prevent producers from significantly expanding planted acres on certain crops on the basis of the NAP benefits available.

Response: The Act does not provide for limiting NAP benefits if a producer increases acreage of a crop. The Act only limits the use of assigned yields when the crop acreage in the county has significantly increased from previous years.

Comment: One comment received from a trade association stated that since producers must file annual acreage reports it is imperative that they be notified on the availability of NAP. The trade association suggested post-disaster sign-up for the first few years of this program.

Response: The Act requires producers to annually provide records of previous years acreage, yield, and production. Further, producers are required to file acreage reports showing the current crop years planted and prevented planted acreage. These requirements cannot be changed. Under the Act, producers are not required to submit an application for payment until the application deadline, which occurs after the loss has occurred.

With the exception of a few minor editorial or technical corrections, other changes made by FCIC are as follows:

(1) Removed the reference to the definitions for actual yield, adjusted yield, and replacement crop at § 404.7(b), (c), and (dd) because those terms are not relevant to this program;

(2) Removed the reference to the definition for master yield at § 404.7(u) because there are no master yields under NAP;

(3) Added a definition for CAT, FSA, NASS; and NAP in § 404.7 for clarity;

(4) Added a definition for ornamental nursery crop at § 404.7 to clarify which nursery crops are covered;

(5) Added a provision to § 404.11 which makes NAP assistance available for any crop for which insurance is available in the county, that is affected by natural disaster that is not insurable under the producer's crop insurance policy for clarity even though such coverage was available under the interim rule;

(6) Revised § 404.13 for clarity, added ''county'' as an option for area designations, and require a minimum number of producers for NAP areas within the United States;

(7) Added § 404.23 to clarify how NAP payments are calculated and redesignated the remaining sections accordingly.

Good cause is shown to make this rule effective upon public filing with the Federal Register, and without the 30-day period required by the Administrative Procedure Act. The interim rule implemented the NAP requirements mandated by the amendments to the Federal Crop Insurance Act by the Federal Crop Insurance Reform Act of 1994. This final rule needs expedited implementation in order to facilitate the processing of pending applications for NAP benefits. Therefore, good cause is shown to make this rule effective in less than 30 days after publication.

List of Subjects in 7 CFR Part 404

Agricultural commodities, Disaster assistance, Reporting and recordkeeping requirements.

Final Rule

Accordingly, 7 CFR Part 404 is revised to read as follows:

PART 404—NONINSURED CROP DISASTER ASSISTANCE PROGRAM—REGULATIONS FOR THE 1995 AND SUCCEEDING CROP YEARS

Sec.

404.1 General statement.
404.3 Applicability.
404.5 Administration.
404.7 Definitions.
404.9 Coverage.
404.11 Eligibility.
404.13 Area.
404.15 Yield determinations.
404.17 Acreage report.
404.19 Loss requirements.
404.21 Application for payment and notice of loss.
404.23 Payments for reduced yield and prevented planting.
404.25 Multiple benefits.
404.27 Payment and income limitations.
404.29 Misrepresentation, scheme and device, and fraud.
404.31 Refunds to the Corporation.
404.33 Cumulative liability.
404.35 Appeals.
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404.39 Estates, trusts, and minors.
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404.43 OMB control numbers.

Authority: 7 U.S.C. 1506(l), 1506(p).

§ 404.1 General statement.

The Federal Crop Insurance Act, as amended by the Federal Crop Insurance Reform Act of 1994, requires the Federal Crop Insurance Corporation to implement a noninsured crop disaster assistance program to provide eligible producers of eligible crops with protection comparable to the catastrophic risk protection plan of crop insurance. NAP is designed to help reduce production risks faced by producers of crops for which Federal crop insurance under the Act is not available. NAP will reduce financial losses that occur when natural disasters cause a catastrophic loss of production or prevented planting of an eligible crop. Payment eligibility is based on an expected yield for the area and the producer's approved yield based on actual production history, or a transitional yield if sufficient production records are not available. Production for both the applicable area expected yield and the individual

producer approved yield for the unit must fall below specified percentages in order to be eligible for payments under this part.

§ 404.3 Applicability.

The provisions contained in this part are applicable to each eligible producer and each eligible crop, acreage, or cause of loss for which CAT coverage is not otherwise available.

§ 404.5 Administration.

(a) The NAP program will be administered under the general supervision of the FCIC, and will be carried out through state and county committees and offices of the Farm Service Agency, or other local USDA offices as designated by FCIC.

(b) The state FSA committee will, in accordance with this part, recommend the geographical size and shape of the area where a natural disaster has occurred, and whether the area eligibility requirement has been satisfied. The recommendation of eligibility must be approved by FCIC.

(c) FCIC will determine all yields and prices under this part.

(d) No delegation herein to a state or county FSA committee will preclude the FCIC Manager from determining any question arising under NAP or from reversing or modifying any determination made by a state or county FSA committee.

§ 404.7 Definitions.

Act—The Federal Crop Insurance Act as amended. (7 U.S.C. 1501 *et seq.*)

Actual production history—Refer to 7 CFR part 400, subpart G, except that the terms of subpart G will read as follows when referring to NAP:

Insurance Terms	NAP Terms
Agent	Local office representative
Claim	Application for payment
claim for indemnity	Application for payment
Indemnity payment	NAP payment
Insurable acreage	Eligible acreage
Insurable cause	Natural disaster
Insurable crop	Eligible crop
Insurance company	Provider
Insurance purposes	NAP purposes
Insured	Eligible producer
Insured producer	Eligible producer
Uninsurable acreage	Ineligible acreage
Uninsurable production.	Ineligible production
Uninsured cause of loss appraisal.	Assigned production
Uninsured production	Ineligible production

APH—Actual production history.

Approved yield—An APH yield calculated and approved by FCIC, used to determine any NAP payment in accordance with 7 CFR part 400, subpart G.

Aquacultural species—Any species of aquatic organism grown as food for human consumption or fish raised as feed for fish that are consumed by humans, and which is propagated and reared in an aquatic medium by a commercial operator on private property in water in a controlled environment.

Area—The geographic region recommended by the state FSA committee, and approved by FCIC in accordance with § 404.13, where a natural disaster has occurred which may qualify producers in the area for NAP payments.

Assigned yield—A yield assigned for a crop year in the base period, in accordance with 7 CFR part 400, subpart G, if the producer does not file an acceptable production report by the production reporting date.

Average market price—The price, or dollar equivalent on an appropriate basis; for example, pound, bushel, ton, for an eligible crop established by FCIC for determining NAP payments. Such price will be on a harvested basis without the inclusion of transportation, storage, processing, packing, marketing or other post-harvest expenses and will be based, in part, on historical data.

CAT—A catastrophic risk protection plan of insurance offered by FCIC authorized under section 508(b) of the Act and 7 CFR part 402.

CCC—The Commodity Credit Corporation.

County expected yield—The eligible crop yield established by the State FSA committee and approved by FCIC for the county. Such yield information may be obtained from NASS, CSREES, credible nongovernmental studies, yields in similar areas, and similar reference material. For planted annual crops, such yield will be based on the acreage planted for harvest.

Crop year—The period of time within which the crop is normally grown and designated by the calendar year in which the crop is normally harvested in the area. For crops harvested over two calendar years, the crop year will be the calendar year in which the majority of the crop would have been harvested. For crops grown over more than two calendar years, each year in the growing period will be considered as a separate crop year designated by the calendar year in which the crop sustained a loss. For crops for which CAT is available, the crop year will be as defined by CAT.

CSREES—The Cooperative State Research, Education, and Extension Service.

Eligible crop—An agricultural commodity for which CAT is not available and which is commercially produced for food or fiber as specified in this part. Eligible crop shall also include floricultural, ornamental nursery, and Christmas tree crops, turfgrass sod, and industrial crops. In the case of a crop that historically has multiple plantings in the same crop year that are planted or are prevented from being planted, each planting may be considered a different crop for determining NAP payments. In the case of a crop that has different varieties or types, each variety or type may be considered a separate crop for determining NAP payments, if FCIC determines there is a significant difference in price or yield between the varieties or types.

Expected area yield—The eligible crop yield established and approved by FCIC for the geographic area.

Forage—Land covered with grass or other vegetation, produced under such range management practices as are necessary to sustain sufficient quality and quantity of grass or vegetation each year to be suitable for grazing or mechanical harvest to feed livestock in a commercial operation. NAP benefits for forage produced on any Federal or state owned lands are available only for seeded forage.

FCIC—The Federal Crop Insurance Corporation, a wholly owned Government corporation within the Farm Service Agency (FSA), United States Department of Agriculture.

FSA—Formerly the Consolidated Farm Service Agency; now the Farm Service Agency of the United States Department of Agriculture.

Good farming practices—The cultural practices generally used in the area for the crop to make normal progress toward maturity and produce at least the individual unit approved yield. The practices are normally those recognized by CSREES as compatible with agronomic and weather conditions in the area.

Harvested—A single harvest crop is considered harvested when the producer has, by hand or mechanically, removed the crop from the field. Crops with multiple harvests in one year or harvested over multiple years are considered harvested when the producer has, by hand or mechanically, removed at least one mature crop from the field. The crop is considered harvested once it is taken off the field and placed in a truck or other conveyance. (Exceptions: Hay is considered harvested when in the bale, whether removed from the field or not. Grazing is not considered harvesting for

the purpose of determining a payment rate factor.)

Livestock—Any farm or other animal excluding aquacultural species and, including but not limited to domestic avian, ruminant, equine, and swine species grown or maintained for any purpose.

Local office—The FSA office or other USDA office designated by FCIC.

NASS—The National Agricultural Statistics Service, an agency of the United States Department of Agriculture.

Native forage—Grass or other vegetation occurring naturally without seeding.

Natural disaster—Means damaging weather, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof; or adverse natural occurrence such as earthquake, flood, or volcanic eruption; or related condition, including but not limited to heat, insect infestation, or disease, which occurs as a result of an adverse natural occurrence or damaging weather occurring prior to or during harvest that directly causes, accelerates, or exacerbates the destruction or deterioration of an eligible crop, as determined by the Secretary.

NAP—The noninsured crop disaster assistance program.

Operator—The person who is in general control of the farming operation on the farm during the crop year.

Ornamental nursery crop—A decorative plant grown in a container or controlled environment for commercial sale.

Person—A person as defined in 7 CFR part 1497, subpart B.

Prevented planting—The inability to plant a crop with proper equipment during the planting period for the crop or commodity. A producer must prove that the producer intended to plant the eligible crop and that such crop could not be planted due to natural disaster reasonably related to the basis for the area designation under § 404.13, as determined by the FCIC Manager. The natural disaster that caused the prevented planting must have occurred after the final planting date for the previous crop year and before the final planting date for the crop year in which a request for NAP payment was made. For crops with multiple plantings in a single crop year and one crop has been harvested, the natural disaster must occur, after the harvest of the harvested crop and before the end of the planting period for the next planting of the crop.

Producer—A person who, as owner, landlord, tenant, or sharecropper, is entitled to share in the production from the eligible commodity or in the proceeds thereof.

Production report—A written record showing the commodity's annual production and used to determine the producer's yield for NAP purposes. The report contains yield history by unit, if applicable, including planted acreage for annual crops, eligible acreage for perennial crops, and harvested and FCIC appraised production for the previous crop years. This report must be supported by verifiable written records, measurement of farm-stored production, or by other records of production approved by FCIC. Information contained in an application for payment is considered a production report for the unit for the crop year for which the application was filed.

Qualifying gross revenues means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income for the calendar year from such operations; and

(2) With respect to a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the person's total gross income from all sources.

Reseeded or replanted crop—The same crop planted on the same acreage after the first planting of the crop has failed.

Seeded forage—Acreage which is mechanically seeded with grasses or other vegetation at regular intervals, at least every 7 years, in accordance with good farming practices.

Share—The producer's percentage of interest in the eligible crop as an owner, operator, or tenant at the beginning of the crop year. For the purposes of determining eligibility for NAP payments, the producer's share will not exceed the producer's share at the earlier of the time of loss or the beginning of harvest. Acreage or interest attributed to a spouse, child, or member of the same household may be considered part of the producer's share unless considered a separate person.

Transitional NAP yield (''T'' Yield)—An estimated yield based on the county expected yield adjusted for individual producers as determined by FCIC. The T-yield will be used in the approved yield calculation process when less than four consecutive crop years of actual or assigned yields are available. (See APH).

Unit—For the noninsured crop disaster assistance program, all acreage of the eligible crop in the county for the crop year:

(1) In which the person has 100 percent crop share; or

(2) Which is owned by one person and operated by another person on a share basis.

(Example: If, in addition to the land the person owns, the person rents land from five landlords, three on a crop share basis and two on a cash basis, the person would be entitled to four units, one unit for each crop share lease and one unit which includes the two cash leases and the land owned by the person.) Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land will be considered as owned by the lessee. No unit other than that stated herein will be permitted.

§ 404.9 Coverage.

(a) Producers who are eligible to receive NAP payments for crop years 1995 through 1998 will receive coverage against loss in yield greater than 50 percent of the producer's approved yield for the eligible crop payable at 60 percent of the established average market price for the crop.

(b) Producers who are eligible to receive NAP payments after crop year 1998 will receive coverage against loss in yield greater than 50 percent of the producer's approved yield for the eligible crop payable at 55 percent of the established average market price for the crop.

(c) FCIC will adjust the NAP payment rate for crops that are produced with significant and variable expenses that are not incurred because the crop acreage was prevented from being planted or planted but not harvested.

(d) NAP payments will be determined by unit based on the production of all acreage of that crop (planted and eligible prevented from being planted) in the unit.

(e) Each producer's NAP payment will be based on the producer's share of the eligible crop.

§ 404.11 Eligibility.

Eligible crops under this part will be any commercial agricultural crop, commodity, or acreage of a commodity grown for food or fiber for which CAT is not available under 7 CFR part 402 unless excluded by paragraph (b) of this section. Different types or varieties of a crop or commodity may be treated as a separate eligible crop, if FCIC determines there is a significant difference in price or yield.

(a) NAP payments will be made available for:

(1) Any commercial crop grown for food;

(2) Any commercial crop planted and grown for livestock consumption,

including but not limited to grain and forage crops;

(3) Any commercial crop grown for fiber, excluding trees grown for wood, paper, or pulp products;

(4) Any commercially produced aquacultural species;

(5) Floriculture crops;

(6) Ornamental nursery crops;

(7) Christmas tree crops;

(8) Turfgrass sod;

(9) Industrial crops; and

(10) Any crop, for which crop insurance under the Act is available in the county, that is affected by a natural disaster that is not insurable under the producer's crop insurance policy.

(b) NAP payments will not be available:

(1) For losses of livestock or their by-products;

(2) To any person who has qualifying gross revenues in excess of $2 million;

(3) For any acreage in any area for any crop for which CAT is available, unless the loss was caused by a natural disaster that is not covered under CAT and all other eligibility requirements for NAP are satisfied;

(4) To any person who, in accordance with chapter VII of 7 CFR and section 1764 of the Food Security Act of 1985, has been convicted under Federal or state law of planting, cultivating, growing, producing, harvesting or storing a controlled substance in any applicable crop year;

(5) Producing an agricultural commodity in any crop year on a field on which highly erodible land is predominant, unless the person is exempt under the provisions of § 12.5 of this title; or

(6) Producing an agricultural commodity in any crop year on converted wetland, unless the person is exempt under the provisions of § 12.5 of this title.

(c) Any tenant, landlord, or producer on the unit separate from the person determined to be ineligible under this provision will remain eligible for NAP payments for their share of the crop unless such tenant, landlord, or producer on the unit is:

(1) Also convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance;

(2) Also in violation of chapter XII of the Food Security Act of 1985 and the regulations issued thereunder; or

(3) Otherwise determined by FCIC to be ineligible for NAP payments.

§ 404.13 Area.

(a) For the purposes of this part, acreage affected by a natural disaster, or any adjustment thereto, will be included in the area recommended by the state FSA committee and submitted to FCIC for approval, regardless of whether the commodity produced on the affected acreage suffered a loss.

(b) Except for eligible areas identified in paragraph (f) of this section, an approved area shall include at least five producers of crops on separate and distinct farms for which the area has been approved for the payment of NAP benefits. Notwithstanding this provision, FCIC may approve an area having fewer than five producers if the Manager determines that such area will suffer significant economic consequences as a result of the disaster.

(c) An area may be designated as follows:

(1) A county;

(2) Aggregated acreage that is at least 320,000 acres; or

(3) Aggregated acreage with not less than $80 million average value for all crops produced annually.

(d) If the aggregated acreage affected by the natural disaster does not meet the minimum requirement specified in paragraph (c)(2) or (3) of this section, the aggregated acreage will be expanded by adding acres from around the affected acreage, until the minimum requirement is met.

(e) The area may not be defined in any manner that intentionally includes or excludes producers or crops.

(f) In lieu of the paragraph (a) and (c) of this section, for eligible areas outside the United States, the area shall include 10 or more producers of the crop. Notwithstanding this provision, FCIC may approve an area outside the 50 United States having fewer than 10 producers of the crop for which the area is requested if the Manager determines that such area will suffer significant economic consequences as a result of the disaster.

§ 404.15 Yield determinations.

(a) FCIC will establish expected area yields for eligible crops for each county or area for which the NAP is available, using available information, which may include, but is not limited to, NASS data, CSREES records, credible nongovernment studies, yields in similar areas, and reported approved yield data. For planted annual crops, such yields will be based on the acreage planted for harvest.

(b) FCIC may make county yield adjustments taking into consideration different yield variations due to different farming practices in the county such as: irrigated, nonirrigated, organic, nonorganic; different types and varieties of a crop; and intended use.

(c) In establishing expected area yields for eligible crops:

(1) If the approved area corresponds to a single county, the expected area yield will be the yield established by FCIC for that county, including any adjustments permitted by this section; or

(2) If the approved area encompasses portions of a county or more than one county, the expected area yield will be the weighted average of the yields established by FCIC for those counties in the area, including any adjustments permitted by this section.

(3) FCIC may adjust expected area yields if:

(i) The cultural practices, including the age of the planting or plantings, are different from those used to establish the yield.

(ii) The expected area yield established on a state or county level is determined to be incorrect for the area.

(d) FCIC will establish approved yields for purposes of providing assistance under this part. Approved yields for the eligible crop will be based on the producer's actual production history in accordance with the provisions of 7 CFR part 400, subpart G.

(e) The approved yield established for the producer for the year in which the NAP payments are offered will be equal to the average of the consecutive crop year yields, as established by FCIC, reported and certified of that producer for that eligible crop.

(f) If a producer receives an assigned yield for a year of natural disaster because production records were not submitted by the production reporting deadline, the producer will be ineligible to receive an assigned yield for the year of the next natural disaster unless adequate production records for the eligible crop from the previous one or more years, as applicable, are provided to the local office. The producer shall receive a zero yield for those years the producer is ineligible to receive an assigned yield.

(g) FCIC will select certain producers on a random or targeted basis and require those selected to provide records acceptable to FCIC to support the information provided. Producers may also be required to support the yield certification at the time of loss adjustment or on post-audit. Each certification must be supported by records acceptable to FCIC. Failure to produce records acceptable to FCIC will result in FCIC establishing the yield in accordance with APH and may subject the producer to criminal and civil false claims actions under various Federal statutes as well as refund of any amount received. In addition, sanctions as set

out at 7 CFR part 400, subpart R may be imposed for false certification. Records acceptable to FCIC may include:

(1) commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries if the eligible crop was sold or otherwise disposed of through commercial channels provided the records are reliable or verifiable; and

(2) such documentary evidence as is necessary in order to verify the information provided by the producer if the eligible crop has been sold, fed to livestock, or otherwise disposed of other than through commercial channels such as contemporaneous measurements, truck scale tickets, and contemporaneous diaries, provided the records are reliable or verifiable.

(h) Any producer who has a contract to receive a guaranteed payment for production, as opposed to delivery, of an eligible crop will have the production adjusted upward by the amount of the production corresponding to the amount of the contract payment received.

(i)(1) Producers will not be eligible to receive an assigned yield if the acreage of the crop in a county for the crop year has increased by more than 100 percent over any year in the preceding seven crop years, unless:

(i) The producer provides adequate records of production costs, acres planted, and yield for the crop year for which NAP payments are being sought.

(ii) FCIC determines that the records provided under this paragraph are inadequate, FCIC may require proof that the eligible crop could have been marketed at a reasonable price had the crop been harvested.

(2) The provisions of this section will not apply if:

(i) The crop has been inspected prior to the occurrence of a loss by a third party acceptable to FCIC; or

(ii) The FSA county executive director, with concurrence of the FSA state director, makes a recommendation for an exemption from the requirements and such recommendation is approved by FCIC.

§ 404.17 Acreage report.

(a) Producers must file one or more acreage reports annually at the local office no later than the date specified by FCIC for each crop the producer will want made eligible for the NAP program. The acreage report may be filed by the farm operator. Any producer will be bound by the acreage report filed by the farm operator unless the producer files a separate acreage report prior to the acreage reporting date.

(b) That acreage report must include all of the following information:

(1) All acreage in the county of the eligible crop (for each planting in the event of multiple planting) in which the producer has a share;

(2) The producer's share at the time of planting or the beginning of the crop year;

(3) The FSA farm serial numbers;

(4) The crop, practice, and intended use;

(5) All persons sharing in the crop (including the identity of any person having a substantial beneficial interest in the crop (refer to 7 CFR part 400, subpart Q) and the person's employer identification number or social security number, if the person wishes to receive any payment under the Act);

(6) The date the crop was planted;

(7) Acreage prevented from being planted; and

(8) Production from the previous crop year. (For example: The producer reported the crop acreage planted in 1995. The producer must then report the 1995 production for that acreage by the 1996 acreage reporting date for the crop.)

(c) A person's failure to submit the required information by the designated acreage reporting dates may result in the denial of NAP payments. If there is a change of ownership, operation, or share within the farming operation after the acreage reporting date, the local office must be notified not later than 30 calendar days after the change and proof of the change must be provided in order to maintain eligibility for payments under this part.

§ 404.19 Loss requirements.

(a) To qualify for payment under this part, the loss or prevented planting of the eligible crop must be due to a natural disaster as defined at § 404.7.

(b) NAP assistance will not cover losses due to:

(1) The neglect or malfeasance of the producer;

(2) The failure of the producer to reseed or replant to the same crop in the county where it is customary to reseed or replant;

(3) The failure of the producer to follow good farming practices for the commodity and practice;

(4) Water contained or released by any governmental, public, or private dam or reservoir project, if an easement exists on the acreage affected for the containment or release of the water;

(5) Failure or breakdown of irrigation equipment or facilities; or

(6) Except for tree crops and perennials, inadequate irrigation resources at the beginning of the crop year.

(c) A producer of an eligible crop will not receive NAP payments unless the projected average or actual yield for the crop, or an equivalent measurement if yield information is not available, in the area falls below 65 percent of the expected area yield. Once this area, and all other, eligibility requirements have been satisfied:

(1) A reduced yield NAP payment will be made to a producer if the total quantity of the eligible crop that the producer is able to harvest on the unit is less than 50 percent of the approved yield for the crop due to natural disaster reasonably related to the basis for the area designation under § 404.13, as determined by the FCIC Manager, factored for the share of the producer for the crop. Production from the entire unit will be used to determine whether the producer qualifies for a NAP payment. The quantity will not be reduced for any quality consideration unless a zero value is established.

(2) A prevented planting NAP payment will be made if the producer is prevented from planting more than 35 percent of the total eligible acreage intended for planting to the eligible crop. Producers must have intended to plant the crop and prove that they were prevented from planting the crop due to natural disaster reasonably related to the basis for the area designation under § 404.13 and the producer may be required to prove that such producer had the resources available to plant, grow, and harvest the crop, as applicable.

(d) NAP payments for prevented planting will not be available for:

(1) Tree crops and other perennials, unless the producer can prove resources were available to plant, grow, and harvest the crop, as applicable;

(2) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes; or

(3) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by USDA.

§ 404.21 Application for payment and notice of loss.

(a) Any person with a share in the eligible crop who would be entitled to a NAP payment must provide a notice of damage or loss within 15 calendar days after the occurrence of the prevented planting (the end of the planting period) or recognizable damage to the crop. For the 1995 crop year only, the notice must be filed within the later of July 3, 1995, or 15 days after the occurrence of the prevented planting or damage to the crop. The notice must be filed at the local office serving the area

where the producer's unit is located. The farm operator may provide the notice for all producers with an interest in the crop. All producers on a farm will be bound by the operator's filing or failure to file the application for payment unless the individual producers elect to timely file their notice.

(b) Applications for NAP payments must be filed, on our form, by the applicant with the local office no later than the first acreage reporting date for the crop in the crop year immediately following the crop year in which the loss occurred.

(1) If the producer chooses not to harvest the crop, all eligible acres and crop units for which the producer intends to make an application for payment must be left intact until the units have been appraised or released by an FCIC loss adjuster.

(2) If the producer harvests the crop, the producer must provide such documentary evidence of crop production as FCIC may require which may include leaving representative samples of the crop for inspection.

(c) Failure to make timely application or to supply the required documentary evidence shall result in the denial of NAP payments.

(d) Payments under this part may be assigned by the eligible producer only on our form and such assignment is effective only when approved by FCIC. Failure of FCIC to make payment in accordance with such assignment will not give rise to any liability on the part of FCIC to the assignee.

§ 404.23 Payments for reduced yields and prevented planting.

In the event that the area loss requirement has been satisfied for the crop and either:

(a) The producer has sustained a loss in yield in excess of 50 percent of the producer's approved yield established for the crop the NAP low yield payment will be determined by:

(1) Multiplying the producer's approved yield by the total eligible acreage planted to the eligible crop;

(2) Multiplying the product of paragraph (a)(1) of this section by 50 percent;

(3) Subtracting the total production from the total eligible acreage from the result in paragraph (a)(2) of this section;

(4) Multiplying the product of paragraph (a)(3) of this section by the producer's share of the eligible crop;

(5) Multiplying the result of paragraph (a)(4) of this section by the applicable payment factor in accordance with § 404.9(c);

(6) Multiplying the result in paragraph (a)(5) of this section by :

(i) For the 1995 through 1998 crop years, 60 percent of the average market price, as determined by FCIC, or any comparable coverage, as determined by FCIC: or

(ii) For the 1999 and subsequent years, 55 percent of the average market price, as determined by FCIC, or any comparable coverage, as determined by FCIC; or

(b) The producer has been unable to plant at least 35 percent of the acreage intended for the eligible crop, the NAP payment will be determined by:

(1) Multiplying the producer's acreage intended to be planted to the eligible crop by 35 percent;

(2) Subtracting the result in (b)(1) of this section from the number of eligible prevented planting acres as determined in § 404.19 (c) (2);

(3) Multiplying the result of (b)(2) of this section by the producer's share of the eligible crop;

(4) Multiplying the producer's approved yield by the result of (b)(3) of this section;

(5) Multiplying the result of (b)(4) of this section by the approved prevented planting payment factor in accordance with § 404.9(c);

(6) Multiplying the result of (b)(5) of this section by:

(i) For the 1995 through 1998 crop years, 60 percent of the average market price, as determined by FCIC, or any comparable coverage, as determined by FCIC: or

(ii) For the 1999 and subsequent years, 55 percent of the average market price, as determined by FCIC, or any comparable coverage, as determined by FCIC.

§ 404.25 Multiple benefits.

(a) If a producer is eligible to receive NAP payments under this part and benefits under any other program administered by the Secretary for the same crop loss, the producer must choose whether to receive the other program benefits or NAP payments. The producer is not eligible for both. Such election does not relieve the producer from the requirements of making a production and acreage report.

(b) Applicable programs include, but are not limited to, the Emergency Livestock Feed Assistance Program and any other program determined by FCIC to compensate the producer for the same crop loss.

§ 404.27 Payment and income limitations.

NAP payments made to eligible producers are subject to the following provisions:

(a) For the purpose of making such payments, the term ''producer'' will be considered to mean the term ''person'' as determined in accordance with 7 CFR part 1497, subpart B.

(b) No person shall receive payments for a crop year under this part in excess of $100,000.

(c) A person who has qualifying gross revenues in excess of $2 million for the previous calendar year shall not be eligible to receive NAP payments under this part.

(d) Simple interest on payments to the producer which are delayed will be computed on the net payments ultimately found to be due, from and including the 61st day after the latter of the date the producer signs, dates, and submits a properly completed application for payment on the designated form, the date disputed applications are adjudicated, or the date the area is approved for NAP payments. Interest will be paid unless the reason for failure to timely pay is due to the producer's failure to provide information or other material necessary for the computation or payment. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semiannually on or about January 1 and July 1 of each year and may vary with each publication.

§ 404.29 Misrepresentation, scheme and device, and fraud.

(a) If FCIC determines that any producer has misrepresented any fact or has knowingly adopted, participated in, or benefitted from, any scheme or device that has the effect of defeating, or is designed to defeat the purpose of this part, such producer will not be eligible to receive any payments applicable to the crop year for which the scheme or device was adopted.

(b) If any misrepresentation, scheme or device, or practice has been employed for the purpose of causing FCIC to make a payment which FCIC otherwise would not make under this part:

(1) FCIC will withhold all or part of the payment that would otherwise be due.

(2) All amounts paid by FCIC to any such producer, applicable to the crop year in which the offense occurred, must be refunded to FCIC together with interest and other amounts as determined in accordance with this part.

(3) FCIC may impose such other penalties or administrative sanctions as authorized by section 506(n) of the Federal Crop Insurance Act, as amended

or available under 7 CFR part 400, subpart R.

(c) Scheme and device may include, but is not limited to:

(1) Concealing any information having a bearing on the application of the rules of this part;

(2) Submitting false information to the FCIC or any county or state FSA committee; or

(3) Creating fictitious entities for the purpose of concealing the interest of a person in the farming operation.

§ 404.31 Refunds to the Corporation.

(a) In the event that there is a failure to comply with any term, requirement, or condition for payment made in accordance with this part, or the payment was established as a result of erroneous information provided by any person, or was erroneously computed, all such payments or overpayments will be refunded to FCIC on demand, together with interest.

(b) Interest will accrue in accordance with the provisions of 7 CFR § 1403.9.

(c) Interest on any amount due the FCIC found to have been received by the producer as a result of fraud, misrepresentation, scheme or device, or presenting a false application for payment will start on the date the producer received the payment.

(d) Recovery of delinquent debts and set off will be in accordance with 7 CFR part 1403.

(e) If FCIC determines it is necessary to contract with a collection agency or to employ an attorney to assist in collection, the producer will pay all the expenses of collection.

(f) All amounts paid will be applied first to the payment of expense of collection, second to the reduction of any penalties which may have been assessed, then to the reduction of accrued interest, then to the reduction of the principal balance.

§ 404.33 Cumulative liability.

(a) The liability of any producer for any payment or refunds, which is determined in accordance with this part to be due to FCIC, will be in addition to any other liability of such producer under any civil or criminal fraud statute or any other statute or provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 1014, and 31 U.S.C. 3729.

(b) All producers on the unit receiving payments under this part will be jointly and severally liable to repay any unearned NAP payments.

§ 404.35 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except the designation of an area for which there is no appeal rights because it is determined a rule of general applicability, must be in accordance with part 780 of this title.

§ 404.37 Exemption from levy.

Any payment that is due any person under this part will be made without regard to questions of title under state law and without regard to any attachment, levy, garnishment, or any other legal process against the crop, and the proceeds thereof, which may be asserted by any creditor, except statutory liens of the United States.

§ 404.39 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible will be eligible for NAP payments under this part only if such person meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 404.41 Death, incompetence, or disappearance.

In the case of death, incompetence or disappearance, of any person who is eligible to receive NAP payments in accordance with this part, such payments will be disbursed in accordance with part 707 of this title.

§ 404.43 OMB control numbers.

These regulations amend the information collection requirements previously approved by the Office of Management and Budget (''OMB'') under OMB control number 0563–0016.

Done in Washington, D.C., on February 22, 1996.

Suzette M. Dittrich,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–4411 Filed 2–22–96; 3:00 pm]

BILLING CODE 3410–FA–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1690–95]

RIN 1115–AD91

Immigrant Petitions; Children of Widows or Widowers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adopts without change an interim rule published in the Federal Register on July 31, 1995, by the Immigration and Naturalization Service (''the Service''), which amended the Service's regulations by providing clarifying language and procedures for according immigrant status to children of widows or widowers who were not previously eligible for immigration benefits as derivative immediate relatives. This rule was necessary to enhance family well-being by promoting the family unity relationship between the child and his or her widowed mother or father.

EFFECTIVE DATE: This final rule is effective February 27, 1996.

FOR FURTHER INFORMATION CONTACT: Ramonia Law-Hill, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 ''I'' Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: On July 31, 1995, the Commissioner of the Immigration and Naturalization Service published in the Federal Register at 60 FR 38947–38948 an interim rule with request for comments. The rule implemented section 219(b) of the Immigration and Nationality Technical Corrections Act of 1994, Public Law 103–416, dated October 25, 1994. The rule enabled the child of a widow or widower to be included in the widow or widower's petition and to accompany or follow to join the widow or widower to the United States as a derivative immediate relative. The rule enhanced family well-being by promoting the family relationship between the child and his or her widowed mother or father.

The public was provided with a 60-day comment period which ended on September 29, 1995. No comments were received. Accordingly, the Service is adopting the interim rule as a final rule without change.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner of the Immigration and Naturalization Service, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely adopts without change an interim rule which has been in effect since July 31, 1995.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section (6)(a)(3)(A).

Executive Order 12612

The regulation will not have a substantial direct effect on the States, on the relationships 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 rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

This regulation will enhance family well-being by promoting the family unity relationship between the child and his or her mother or father.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Immigration, Petitions.

Accordingly, the interim rule amending 8 CFR part 204 which was published in the Federal Register on July 31, 1995, at 60 FR 38947–38948 is adopted as a final rule without change.

Dated: February 16, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–4338 Filed 2–26–96; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 95–052DF]

RIN 0583–AC02

Use of Sorbitol in Cooked Roast Beef Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to add cooked roast beef products to the list of products in which sorbitol is permitted. This action is being taken in response to a petition requesting that FSIS allow the use of up to 2 percent sorbitol both as a sweetener and to reduce charring in cooked roast beef products. The sorbitol will be added to a solution of ingredients that are pumped into the beef prior to cooking.

DATES: This rule will be effective on April 29, 1996 unless FSIS receives written adverse comments or written notice of intent to submit adverse comments on or before March 28, 1996. If critical comments are received, the final rulemaking document will be withdrawn and a proposed rulemaking document will be published.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments to: FSIS Docket Clerk, Docket #95–052DF, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 4352, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250–3700. Please submit one original and two copies of written adverse comments.

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 254–2565.

SUPPLEMENTARY INFORMATION: Under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), FSIS provides mandatory inspection of meat and meat food products prepared for distribution in commerce. The Act prohibits the addition of any substance to any meat or meat food product that may render the product adulterated (21 U.S.C. 610). Section 318.7(a)(1) of the Federal meat inspection regulations (9 CFR 318.7) prohibits the use of any substance in the preparation of any product unless its use is approved in section 318.7(c)(4) of the Federal meat inspection regulations, which is the chart of substances acceptable for use in the preparation of products, or unless it is approved elsewhere in the regulations or by the Administrator, FSIS.

FSIS was petitioned to approve the use of sorbitol in cooked roast beef products in the same amount currently approved for other meat and meat food products. The petitioner requested that FSIS amend § 318.7(c)(4) of the Federal meat inspection regulations to allow the use of up to 2 percent sorbitol both as a sweetener and to reduce charring in cooked roast beef products, excluding the formula weight of water or ice. The sorbitol will be added to a solution of ingredients that are pumped into beef prior to cooking.

Charring is an adverse effect that occurs when sugar-related substances are subjected to prolonged heat treatment. Sorbitol is a common sugar alcohol; it can be found in foods like apples and pears. It is about half as sweet as sucrose and is often used as a substitute sweetener in reduced-sugar food products, such as sugar-free candy and other food products for diabetics. Sorbitol is listed in 21 CFR 184.1835 as a substance generally recognized as safe for use as an anticaking agent, humectant, flavoring agent, and for various other uses, when used in accordance with good manufacturing practices. Sorbitol does not posses the same chemical makeup as do sugars that carmelize, i.e., brown and char in the presence of high heat. It is this characteristic of sorbitol that reduces charring in cooked roast beef products and other meat products.

The petitioner conducted informal sensory testing using various levels of sorbitol in roast beef product formulations.[1] Tests were conducted by using informal visual and taste panels. The visual panel measured the amount of charring that took place on roast beef products treated with sorbitol by evaluating the browning of products after they were treated and cooked. The sweetness was measured by a separate panel; that panel tasted the test products after they were treated and cooked. The test data show that 2 percent sorbitol accomplishes both charring reduction and suitable sweetness.

After reviewing the petitioner's technical data and information, the Administrator, FSIS determined that the chart of approved substances in 9 CFR 318.7(c)(4) should be amended to allow

[1] Information regarding the informal sensory testing is available in the FSIS Docket Room, USDA, 14th & Independence Avenue, SW., Room 4352, South Agriculture Building, Washington, DC 20250–3700.

the use of sorbitol for the purposes and in the amounts requested by the petitioner. The technical data demonstrates the efficacy of sorbitol for these uses. Sorbitol is a substance generally recognized as safe by the Food and Drug Administration. The Administrator, FSIS, has determined that the use of sorbitol (1) will not render the product adulterated or misbranded or otherwise not in compliance with the requirements of the Act; and (2) is functional and suitable for the product, and is permitted at the lowest level necessary to accomplish the stated effect. Accordingly, FSIS is amending the chart of approved substances in 9 CFR 318.7(c)(4) to allow the use of sorbitol as a sweetener and to reduce charring in cooked roast beef products at a level not more than 2 percent of the weight of the formula, excluding the formula weight of water or ice.

FSIS expects no adverse public reaction resulting from this change in regulatory language. Therefore, unless adverse or critical comments, or a notice of intent to submit adverse comments are received within 30 days, the action will become final 60 days after publication in the Federal Register. The proposed rulemaking notice will establish a comment period.

Executive Order 12866

This direct final rule has been determined to be not significant and therefore and was not reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

This direct final rule has been have reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) from imposing any marking or packaging requirements on federally inspected meat products that are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States.

This direct final rule is not intended to have retroactive effect.

There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this direct final rule. However, the administrative procedures specified in 9 CFR §§ 306.5 must be exhausted prior to any judicial challenge of the application of the provisions of this direct final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA.

Effect on Small Entities

The Administrator has made an initial determination that this direct 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). The direct final rule will permit the use of sorbitol as a sweetener and to reduce charring in cooked roast beef products. The sorbitol will be added to a solution of ingredients that are pumped into the beef prior to cooking. This amendment will provide cooked roast beef processors with an additional, alternative substance that can be used to sweeten their product while at the same time reducing charring that may occur during the cooking process. The use of sorbitol as a sweetener and to reduce charring in cooked roast beef products will be voluntary. Small manufacturers opting to use sorbitol for these purposes will be required to revise their product labels. Decisions by individual manufacturers on whether to do so will be based on their conclusions that the benefits outweigh the costs.

Paperwork Requirements

Abstract: FSIS has reviewed the paperwork and recordkeeping requirements in this direct final rule in accordance with the Paperwork Reduction Act. This rule requires manufacturers opting to use sorbitol as a sweetener and to reduce charring in cooked roast beef products to revise their product labels and submit such labeling to FSIS for approval.

Estimate of Burden: Establishments must develop product labels in accordance with the regulations. To receive approval of the labels, establishments must complete FSIS Form 7234–1. FSIS program employees review FSIS Form 7234–1 to ensure that information on the labels complies with the regulations. FSIS estimates that it will take 60 minutes to design and develop modified product labels in accordance with the proposed regulations and 15 minutes to prepare FSIS Form 7234–1 and submit it, along with the label, to FSIS or to a label expediter who will deliver the form and label to FSIS.

Respondents: Meat establishments.

Estimated Number of Respondents: 315 meat establishments.

Estimated Number of Responses per Respondent: FSIS estimates that each establishment would modify about 2 product labels.

Estimated Total Annual Burden on Respondents: 788 hours.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Lee Puricelli, Paperwork Specialist, see address above, and Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

For the reasons set out in the preamble, 9 CFR part 318 is amended as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 318.7(c)(4) is amended by adding to the chart of substances, under the Class of Substance ''Flavoring agents; protectors and developers,'' the substance sorbitol to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
* * *	* * *	* * *	* * *	* * *
Flavoring Agents; protectors and developers.	Sorbitol . . .	To flavor, to facilitate the removal of casings from product, and to reduce carmelization and charring.	As provided in part 319 of this subchapter, cooked roast beef, cured pork products, and cooked sausage labeled frankfurter, frank, furter, wiener, and knockwurst.	Not to exceed 2 percent of the weight of the formula, excluding the formula weight of water or ice, when used in accordance with 21 CFR 184.1835.
* * *	* * *	* * *	* * *	* * *

Done at Washington, DC, on: February 20, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–4303 Filed 2–26–96; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ACE–16]

Amendment to Class E Airspace; Hastings, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Hastings, NE, to accommodate a planned Standard Instrument Approach Procedure (SIAP) at the Hastings Municipal Airport. This action will provide for additional controlled airspace necessary for the planned SIAP utilizing the Global Positioning System (GPS).

EFFECTIVE DATE: 0901 UTC June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On December 20, 1995, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Hastings, NE (60 FR 65602). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Hastings Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order of 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace area at Hastings, NE, by providing additional controlled airspace for aircraft executing the new SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that his rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Hastings, NE [Revised]

Hastings Municipal Airport, NE
(Lat. 40°36′16″ N., long. 98°25′39″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Hastings Municipal Airport and within 2 miles each side of the 338° bearing from the Hastings Municipal Airport extending from the 6.7-mile radius to 10 miles north of the airport and within 2 miles each side of the 143° bearing from Hastings Municipal Airport extending from the 6.7-mile radius to 10 miles southeast of the airport, and within 3 miles each side of the 219° bearing from Hastings Municipal Airport extending from the 6.7-mile radius to 10 miles southwest of the airport.

* * * * *

Issued in Kansas City, MO, on January 24, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–4383 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ACE–15]

Amendment to Class E Airspace; Carroll, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Carroll, IA, to accommodate a planned Standard Instrument Approach Procedure (SIAP) at the Arthur N. Neu Airport. This action will provide for additional controlled airspace necessary for the planned SIAP utilizing the Global Positioning System (GPS).

EFFECTIVE DATE: 0901 u.t.c. June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On December 20, 1995, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Carroll, IA (60 FR 65603). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Arthur N. Neu Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 to FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace area at Carroll, IA, by providing additional controlled airspace for aircraft executing the new SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Carroll, IA [Revised]

Arthur N. Neu Airport, IA
(Lat 42°02′46″ N., long 94°47′20″ W)
Carroll NDB
(Lat 42°02′42″ N., long. 94°47′07″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Arthur N. Neu Airport and within 2.6 miles each side of the 142° bearing from the Carroll NDB extending from the 6.5-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO on January 24, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–4382 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–13]

Amendment to Class E Airspace; Webster City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Webster City, IA to accommodate a planned Standard Instrument Approach Procedure (SIAP) at the Webster City Municipal Airport. This action will provide for additional controlled airspace necessary for the planned SIAP utilizing the Global Positioning System (GPS).

EFFECTIVE DATE: 0901 UTC April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On November 3, 1995, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Webster City, IA (60 FR 62053). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Webster City Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace area at Webster City, IA, by providing additional controlled airspace for aircraft executing the new SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have

a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Webster City, IA [Revised]

Webster City Municipal Airport, IA
(Lat. 42°26′12″ N., long. 93°52′10″W)
Webster City NDB
(Lat 42°26′29″N., long. 93°0′10″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Webster City Municipal Airport and within 2.6 miles each side of the 155° bearing from the Webster City NDB extending from the 6.4-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO on January 22, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–4381 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–12]

Amendment to Class E Airspace; Clinton, IA

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Clinton, IA to accommodate a planned Standard Instrument Approach Procedure (SIAP) at the Clinton Municipal Airport. This action will provide for additional controlled airspace necessary for the planned SIAP based on the Global Positioning System (GPS).

EFFECTIVE DATE: 0901 UTC April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On November 3, 1995, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Clinton, IA (60 FR 61667). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Clinton Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Clinton, IA, by providing additional controlled airspace for aircraft executing the new SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Clinton, IA [Revised]

Clinton Municipal Airport, IA
(Lat. 41°49′52″N., long. 90°19′45″W)
Davenport VORTAC
(Lat. 41°42′30″N., long. 90°29′01″W)
Clinton NDB
(Lat. 41°49′43″N., long. 90°19′40″W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Clinton Municipal Airport and within 1.8 miles each side of the 044° radial of the Davenport VORTAC extending from the 6-mile radius to the VORTAC and within 4.5 miles each side of the 316° bearing from the Clinton NDB extending to 10.5 miles northwest of the NDB and within 1 mile each side of the 146° bearing from the Clinton Municipal Airport extending from the 6-mile radius to 9.5 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO on January 22, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–4380 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–11]

Amendment to Class E Airspace; Charles City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Charles City, IA to accommodate a planned Standard Instrument Approach Procedure (SIAP) at the Charles City Municipal Airport. This action will provide for additional controlled airspace necessary for the planned SIAP utilizing the relocated Non-directional Radio Beacon (NDB).

EFFECTIVE DATE: 0901 U.T.C. April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On December 1, 1995, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Charles City, IA (60 FR 61666). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Charles City Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace area at Charles City, IA, by providing additional controlled airspace for aircraft executing the new SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Charles City, IA [Revised]

Charles City Municipal Airport, IA
(Lat. 43°04′21″N, long. 92°36′39″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Charles City Municipal Airport.

* * * * *

Issued in Kansas City, MO on January 22, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–4379 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–14]

Amendment to Class E Airspace; Atlantic, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Atlantic, IA, to accommodate a planned Standard Instrument Approach Procedure (SIAP) at the Atlantic Municipal Airport. This action will provide for additional controlled airspace necessary for the planned SIAP utilizing the Global Positioning System (GPS).

EFFECTIVE DATE: 0901 UTC June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO, 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On December 20, 1995, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Atlantic, IA (60 FR 65604). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Atlantic Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace area at Atlantic, IA, by providing additional controlled airspace for aircraft executing the new SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Atlantic, IA [Revised]

Atlantic Municipal Airport, IA
(Lat. 41°24′26″N., long. 95°02′49″W)
Atlantic NDB
(Lat. 41°24′14″N., long. 95°02′47″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Atlantic Municipal Airport and within 4 miles each side of the 315° bearing from the Atlantic NDB extending from the 6.4-mile radius to 8.3 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO on January 24, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–4378 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 93

[Docket No. 28473]

High Density Traffic Airports; Slot Allocation and Transfer Method

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Statement of policy.

SUMMARY: This policy statement is necessary to address the impact of airport closings and slow-downs upon slot utilization requirements due to the severe winter storm that affected several High Density Rule Traffic airports during the period January 7 through January 12, 1996.

EFFECTIVE DATE: February 27, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia R. Lane, Manager, Air Traffic Rules and Airspace Law Branch, AGC–230, Regulations Division, Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3491.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1992, the FAA published in the Federal Register (57 FR 37308), an amendment to the minimum slot usage requirement of § 93.227(a) of the Federal Aviation Regulations (14 CFR 93.227(a)). This amendment increased the minimum slot usage percentage from 65 percent to 80 percent, effective January 1, 1993. A slot that is not used or operated a minimum of 80 percent of the time within the bimonthly reporting period is subject to withdrawal by the FAA.

From January 7 through 12, 1996, several airports, including three of the High Density Traffic airports, were forced to close or significantly slow down operations because of severe weather conditions along the east coast of the United States. Due to the airport closings and slow downs, many air carriers and commuters were unable to operate their slots. Many of the carriers have expressed concerns that they will not be able to reach the 80 percent minimum usage requirement due to their inability to operate their slots during those 6 days.

Even though the 80 percent minimum usage requirement takes various adverse factors into account, such as occasional mechanical problems and bad weather, the blizzard that forced the closure and slow down of operations of the airports was an extraordinary weather system of great intensity and duration and should not be considered as a normal bad weather occurrence. The FAA has decided, based on the extreme adverse weather, that operators should not be penalized if they are unable to reach the 80 percent minimum usage requirement due to the 6-day airport closure/slow-down.

This document announces FAA's policy that will allow slot holders and operators to report the slots as being used for all 6 days. In this way, no operator will be in jeopardy of losing a slot merely because the airport was closed or operations were significantly reduced.

Statement of Policy

When an operator submits its bi-monthly use-or-lose report, it may designate any slot scheduled for operation at a High Density Traffic airport from January 7 through January 12, 1996, as operated. The FAA's Office of Chief Counsel, Slot Administration Office will verify that the submitted slot was scheduled, and the FAA will treat as used any slot that the holder-of-record or operator-of-record was schedule to operate over the specified 6 day period.

Issued in Washington, DC on February 21, 1996.

Nicholas G. Garaufis,

Chief Counsel.

[FR Doc. 96–4384 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8642]

RIN 1545–AR48; 1545–AR93

Recognition of Gain or Loss by Contributing Partner on Distribution of Contributed Property or Other Property; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8642), which were published in the Federal Register on Tuesday, December 26, 1995 (60 FR 66727) relating to the recognition of gain or loss on certain distributions of contributed property by a partnership, and to the recognition of gain on certain distributions to a contributing partner.

EFFECTIVE DATE: January 9, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen J. Coleman at (202) 622–3060, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 704 and 737 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8642), which are the subject of FR Doc. 95–30870, is corrected as follows:

§ 1.737–3 [Corrected]

1. On page 66737, column 2, § 1.737–3 (e), second paragraph from the bottom of the column, the paragraph designated ''(e) *Example 1.*'' is correctly designated ''Example 1.''

2. On page 66737, column 3, § 1.737–3 (e), paragraph (i) of *Example 2*, line 4, the language ''nondepreciable real property to the'' is corrected to read ''nondepreciable real property located in the United States to the''.

3. On page 66737, column 3, § 1.737–3 (e), paragraph (ii) of *Example 2*, line 2, the language ''Property B, nondepreciable real property,'' is corrected to read ''Property B, nondepreciable real property located outside the United States,''.

Cynthia E. Grigsby,

Chief, Regulations Unit,

Assistant Chief Counsel (Corporate).

[FR Doc. 96–4177 Filed 2–26–96; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Parts 31 and 301

[TD 8636]

RIN 1545–AN57

Time for Furnishing Wage Statements on Termination of Employer's Operations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations [TD 8636] which were published in the Federal Register for Thursday, December 21, 1995 (60 FR 66139). The final regulations relate to the time for furnishing wage statements to employees and for filing wage statements with the Social Security Administration upon the termination of an employer's operations.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jean M. Casey, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 6051, 6071, and 6081 of the Internal Revenue Code.

Need for Correction

As published, TD 8636 contains a typographical error that is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations which is the subject of FR Doc. 95–30685, is corrected as follows:

On page 66140, column 2, in the preamble under the paragraph heading ''*Additional month to provide Forms W–2 and W–3 to SSA*'', last line, the language ''the final Form 941 is due.'' is corrected to read ''the end of the quarter.''

Cynthia E. Grigsby

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–4176 Filed 2–26–96; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 334

Albermarle Sound, Pamlico Sound, and Adjacent Waters, North Carolina; Danger Zones/Restricted Areas for Naval Aircraft Operations

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is re-establishing a danger zone as a restricted area in the waters off of Harvey Point, Perquimans County, North Carolina. The area designated as the Harvey Point danger zone was disestablished by the Corps in 1988. Due to subsequent surveys of the area by the Navy, it has been determined that unexploded ordnance could exist and in the interest of safety to the public, the area should be closed to certain activities. The re-establishment of the danger zone as a restricted area will allow the public to enter the area but will prohibit any bottom disturbing activities such as dredging, clamming, crabbing, seining or anchoring. Due to the risk of damage to property or injury to the public, good cause exists to make this restricted area regulation effective upon publication in the Federal Register.

EFFECTIVE DATE: February 27, 1996.

ADDRESSES: HQUSACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Yelverton of the Corps Wilmington District at (910) 251–4480, or Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is promulgating a regulation under 33 CFR 334.412 re-establishing an area that was previously a danger zone, as a restricted area in the waters off of Harvey Point, Albemarle Sound, North Carolina.

Background

In accordance with a request by the Navy, the Corps deleted the regulations in 33 CFR 334.410(b)(1) which established a target and bombing danger zone on the north shore of Albemarle Sound, on November 29, 1988 (53 FR 47952–47953). The area was no longer being used by the Navy. This amendment was made prior to promulgation of procedural regulations now found in 33 CFR 334.5 Disestablishment of a danger zone, by the Corps. Pursuant to these regulations, the Agency requesting revocation of a danger zone area shall certify that the area is suitable for use by the public. Harvey Point was previously used as a target and bombing site by the Navy, so the possibility of live ordnance in the mud below the water exists. In the interest of public safety, the Navy requested that the area be established as a restricted area until such time as a thorough survey of the area can be completed and any dangerous ordnance, if any, is removed. The restricted area as established today will allow the public to use the area for recreational and commercial uses, including fishing, swimming, water skiing, boating and other activities provided the activity does not disturb the bottom. Those activities which are specifically prohibited include dredging, clamming, crabbing, seining and anchoring. Upon completion of additional surveys by the Navy and, if appropriate, any subsequent cleanup, the area will be returned to unrestricted public use. An editorial change is also being made to the regulations in 33 CFR 334.410 which reflects a change in the Naval Command responsible for enforcing these danger zones and the added restricted area.

Agency Decision To Adopt the Amendments Without Opportunity for Public Comment and Participation in Rulemaking

The Corps has determined that implementation of final rulemaking for the Harvey Point restricted area will protect the public from possible hazards resulting from previous uses of the area. Nothing will be served by delaying the effective date of the rule. We have found it to be in the National interest to restrict the public use of the prior

Harvey Point danger zone and will remove the restricted area upon notification by the Navy that its surveys and any required cleanup have been completed.

Economic Assessment and Certification

This final rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply. These final rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps has determined that the economic impact of the changes to the restricted area will have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, no significant economic impact on small entities.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Transportation, Waterways.

For the reasons set out in the preamble, 33 CFR Part 334 is amended as set forth below.

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3)

2. Section 334.410 is amended by revising paragraph (d)(4) as follows:

§ 334.410 Albemarle Sound, Pamlico Sound, and adjacent waters, NC; danger zones for naval aircraft operations.

* * * * *

(d) The regulations. * * *

(4) *Enforcing agency.* The regulations in this section shall be enforced by the Commander, Naval Air Force, U.S. Atlantic Fleet, and such agencies as he/she shall designate.

3. Section 334.412 is added to read as follows:

§ 334.412 Albemarle Sound, Pamlico Sound, Harvey Point and adjacent waters, NC; restricted area.

(a) The area. Beginning on the north shore of Albemarle Sound and the easternmost tip of Harvey Point; thence southeasterly to Day Beacon number 3; thence southeasterly to latitude 36°03′06″, longitude 76°16′43″; thence southwesterly to latitude 36°02′18″, longitude 76°19′30″; thence southwesterly to latitude 36°04′18″, longitude 76°20′20″; thence 23°15′ True to the shore; and thence northeasterly along the shore to the point of beginning.

(b) The regulations. The restricted area described in this section is the inactive Harvey Point target range which was disestablished as a danger zone. The area will be open to public access for recreational and commercial uses, except that dredging, clamming, crabbing, seining, and anchoring of all vessels and any other activity which could result in disturbing or penetrating the bottom is prohibited.

(c) Enforcing agency. The regulations in this section shall be enforced by the Commander, Naval Air Force, U.S. Atlantic Fleet, and such agencies as he/she shall designate.

Dated: February 14, 1996.

Stanley G. Genega,

Major General, USA, Director of Civil Works.

[FR Doc. 96–4347 Filed 2–26–96; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 0, 1, 2, 3, 13, 14, 17, and 36

RIN 2900–AH81

Delegation of Authority to Regional Counsels

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Office of General Counsel has changed its field structure from 52 District Counsel offices to 23 Regional Counsel offices. Previously, each District Counsel office was headed by a District Counsel who was authorized to take various actions on behalf of the Department of Veterans Affairs (VA). The new Regional Counsel offices are each headed by a Regional Counsel. In accordance with the provisions of 38 U.S.C. 512, this document delegates to the Regional Counsels the same authority and responsibility to act for VA as was previously granted to District Counsels. This document also sets forth the jurisdiction and address of each Regional Counsel.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Howard Lem, Assistant General Counsel (026), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 565–4885.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 553, there is a basis for dispensing with prior notice and comment and for dispensing with a 30-day delay of the effective date since this final rule constitutes a rule of agency organization, a non-substantive rule.

The Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment, which constitutes a rule of agency organization, is a non-substantive rule. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects

38 CFR Part 0

Conflict of interests.

38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

38 CFR Part 2

Authority delegations (Government agencies).

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

38 CFR Parts 13 and 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs-health, Health care, Homeless, Medical and dental schools, Medical devices, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

38 CFR Part 36

Condominiums, Housing, Indians, Individuals with disabilities, Loan program-housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: February 14, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 0, 1, 2, 3, 13, 14, 17, and 36 are amended as set forth below:

1. The authority citation for parts 0, 1, 2, 3, 13, 14, 17, and 36 continue to read as follows:

Authority: 38 U.S.C. 512.

PART 0—STANDARDS OF ETHICAL CONDUCT AND RELATED RESPONSIBILITIES

2. Remove the words ''District Counsel'' and add in their place ''Regional Counsel'' wherever they appear.

PART 1—GENERAL PROVISIONS

3. Remove the words ''District Counsel'' and add in their place ''Regional Counsel'' wherever they appear.

4. Remove the words ''District Counsels'' and add in their place ''Regional Counsels'' wherever they appear.

PART 2—DELEGATIONS OF AUTHORITY

5. Remove the words ''District Counsel'' and add in their place ''Regional Counsel'' wherever they appear.

6. Remove the words ''District Counsels'' and add in their place ''Regional Counsels'' wherever they appear.

PART 3—PENSIONS, BONUSES, AND VETERANS' RELIEF

7. Remove the words ''District Counsel'' and add in their place ''Regional Counsel'' wherever they appear.

PART 13—VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

8. Remove the words ''District Counsel'' and add in their place ''Regional Counsel'' wherever they appear.

PART 14—LEGAL SERVICES, GENERAL COUNSEL

9. Remove the words ''District Counsel'' or ''District Council'' and add in their place ''Regional Counsel'' wherever they appear.

10. Remove the words ''District Counsels'' and add in their place ''Regional Counsels'' wherever they appear.

11. In § 14.501, add a new paragraph (f) to read as follows:

§ 14.501 Functions and responsibilities of Regional Counsels.

* * * * *

(f) The jurisdictions and addresses of Regional Counsels are as follows:

(1) *Region 1:* (JURISDICTION) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island; (ADDRESS) JFK Federal Bldg., Room E213, Boston, MA 02203.

(2) *Region 2:* (JURISDICTION) New Jersey, Metropolitan New York City; (ADDRESS) 800 Poly Place, Building 14, Brooklyn, NY 11209.

(3) *Region 3:* (JURISDICTION) District of Columbia; Fairfax, Virginia; Arlington, Virginia; Alexandria, Virginia; Martinsburg, West Virginia; and Maryland; (ADDRESS) 849 International Drive, Suite 200, Linthicum, MD 21090.

(4) *Region 4:* (JURISDICTION) Pennsylvania, Delaware; (ADDRESS) 1000 Liberty Ave., Pittsburgh, PA 15222.

(5) *Region 5:* (JURISDICTION) Georgia, South Carolina; (ADDRESS) 730 Peachtree Street, N.E., Atlanta, GA 30365.

(6) *Region 6:* (JURISDICTION) Florida, Puerto Rico; (ADDRESS) P.O. Box 5002, Building 22, Room 333, Bay Pines, FL 33504.

(7) *Region 7:* (JURISDICTION) Ohio, West Virginia (excluding Martinsburg, West Virginia); (ADDRESS) 1240 East Ninth Street, Room 1225, Cleveland, OH 44199.

(8) *Region 8:* (JURISDICTION) Arkansas, Tennessee; (ADDRESS) Federal Courthouse Annex, 110 9th Ave., S., Nashville, TN 37203.

(9) *Region 9:* (JURISDICTION) Alabama, Mississippi; (ADDRESS) 1500 E. Woodrow Wilson Dr., Jackson, MS 39216.

(10) *Region 10:* (JURISDICTION) Illinois, Iowa; (ADDRESS) VA Medical Center, Bldg. 50, P. O. Box 127, Hines, IL 60141.

(11) *Region 11:* (JURISDICTION) Michigan, Wisconsin; (ADDRESS) Patrick V. McNamara Federal Bldg., Suite 1460, 477 Michigan Ave., Detroit, MI 48226.

(12) *Region 12:* (JURISDICTION) Kansas, Missouri, Nebraska; (ADDRESS) 1 Jefferson Barracks Drive, St. Louis, MO 63125–4185.

(13) *Region 13:* (JURISDICTION) Oklahoma, Northern Texas; (ADDRESS) 1400 N. Valley Mills Dr., Waco, TX 76799.

(14) *Region 14:* (JURISDICTION) Louisiana, Southern Texas; (ADDRESS) 6900 Almeda Road, Houston, TX 77030.

(15) *Region 15:* (JURISDICTION) Minnesota, North Dakota, South Dakota; (ADDRESS) VA Medical Center, One Veterans Drive, Bldg. 73, Minneapolis, MN 55417.

(16) *Region 16:* (JURISDICTION) Colorado, Wyoming, Utah, Montana; (ADDRESS) Box 25126, 155 Van Gordon Street, Denver, CO 80225.

(17) *Region 17:* (JURISDICTION) Lower California; (ADDRESS) 11000 Wilshire Blvd., Los Angeles, CA 90024.

(18) *Region 18:* (JURISDICTION) Upper California, Hawaii, Central and Northern Nevada, and Philippine Islands; (ADDRESS) VA Medical Center, 4150 Clement Street, Bldg. 210, San Francisco, CA 94121.

(19) *Region 19:* (JURISDICTION) Arizona, Southern Nevada, and New Mexico; (ADDRESS) 3225 N. Central Ave., Rm. 305, Phoenix, AZ 85012.

(20) *Region 20:* (JURISDICTION) Idaho, Oregon, Washington, Alaska; (ADDRESS) 1220 SW Third Ave., Portland, OR 97204.

(21) *Region 21:* (JURISDICTION) New York (except Metropolitan New York City), Vermont; (ADDRESS) 120 LeBrun, Buffalo, NY 14215.

(22) *Region 22:* (JURISDICTION) Indiana, Kentucky; (ADDRESS) 575 N. Pennsylvania Street, Room 309, Indianapolis, IN 46204.

(23) *Region 23:* (JURISDICTION) North Carolina, Virginia (excluding Fairfax, Arlington, and Alexandria); (ADDRESS) 251 N. Main Street, Winston-Salem, NC 27155.

12. In § 14.518, paragraph (a), remove the word ''district'' and add in its place ''region''.

PART 17—MEDICAL CHARGES, WAIVERS, AND COLLECTIONS

13. Remove the words ''District Counsel'' and add in their place

''Regional Counsel'' wherever they appear.

PART 36—LOAN GUARANTY

14. Remove the words ''District Counsel'' and add in their place ''Regional Counsel'' wherever they appear.

[FR Doc. 96–4304 Filed 2–26–96; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AG23

Veterans Education: Implementation of the Veterans' Benefits Act of 1992 and the Department of Defense Authorization Act for Fiscal Year 1993 in the Post-Vietnam Era Veterans' Educational Assistance Program

AGENCIES: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the educational assistance and educational benefits regulations of the Department of Veterans Affairs (VA). It makes changes concerning measurement of training time, duplication of benefits, advance payment for work study, and permission for some service members who participated in the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) to instead elect to receive benefits under the Montgomery GI Bill—Active Duty. These changes restate statutory requirements.

EFFECTIVE DATES: The effective dates of the changes made by this final rule are as follows:

October 23, 1992: § 21.5058.
October 29, 1992: §§ 21.5023, 21.5145, 21.5231, and 21.5250.
July 1, 1993: § 21.5270.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: Regulations concerning VA-administered educational assistance and educational benefits are contained in 38 CFR Part 21. The Veterans' Benefits Act of 1992 (Pub. L. 102–568) amends educational assistance provisions under VEAP and amends other provisions that affect work-study under that program. The National Defense Authorization Act for Fiscal Year 1993 (Pub. L. 102–484) allows some VEAP participants to receive benefits under the Montgomery GI Bill—Active Duty. This document contains a number of changes to the regulations which merely reflect certain changes made by these public laws. These changes to the regulations are as follows.

Under Public Law 102–568, the limit on the amount of money that VA can pay in advance on a work-study contract has been changed. Formerly, that limit was 40 percent of the total amount payable under the contract. Now the limit is the lesser of 40 percent of the total amount payable under the contract or 50 times the applicable minimum hourly wage in effect on the date the contract is signed. Changes are made to 38 CFR 21.5145 to reflect these statutory provisions.

Public Law 102–484, among other things, provides that a veteran who has been discharged under the Voluntary Separation Incentive or Special Separation Benefit programs before October 23, 1992, was eligible on or before October 23, 1993 to elect to receive educational assistance under the Montgomery GI Bill—Active Duty in lieu of any other educational assistance, including VEAP. Changes are made to § 21.5058 to reflect these statutory changes.

Previously, § 21.5023 allowed for veterans receiving assistance under the Government Employees' Training Act (GETA) also to receive assistance under VEAP if the VEAP training occurred other than during duty hours. However, under Pub. L. 102–568 payment under VEAP is now prohibited for veterans receiving assistance under GETA regardless of whether the veteran is a full-time or part-time employee. Changes are made to § 21.5023 to reflect this statutory change.

Several provisions of Public Law 102–568 apply to VEAP. These are prohibition of receipt of educational assistance while the veterans is training under the Service Members Occupational Conversion and Training Act; a change in the ending date of the award of educational assistance when the veterans die during the period covered by an advanced payment of educational assistance; prohibition of approval of a nonaccredited course offered by independent study and prohibition of approval of an enrollment in such a course; and measurement of nonaccredited courses not leading to a standard college degree. Changes are made to 38 CFR 21.5231, 21.5250, and 21.5270 to reflect these changes.

The effective dates of the various changes made by this final rule reflect the effective dates of the corresponding statutory changes.

Nonsubstantive changes are made for purposes of clarity.

This final rule reflects statutory changes and, therefore, is not subject to the provisions of 5 U.S.C. 552, or 553, including the notice and comment provisions.

The Secretary of Veterans Affairs and the Secretary of Defense hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The changes made by the final rule restate statutory changes. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 11, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

Samuel E. Ebbesen,

Lieutenant General, USA, Deputy Assistant Secretary (Military Personnel Policy), Department of Defense.

For the reasons set out in the preamble, 38 CFR part 21, subpart G is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

1. The authority citation for part 21, subpart G is revised to read as follows:

Authority: 38 U.S.C. 501(a), Chapter 32, unless otherwise noted.

§ 21.5023 [Amended]

2. In § 21.5023, paragraph (b) is amended by removing ''and whose full salary is being paid to him or her while so training''.

§ 21.5058 [Amended]

3. In § 21.5058, paragraph (a) is amended by adding the heading ''General.''

4. In § 21.5058 paragraphs (b) and (c) are revised to read as follows:

§ 21.5058 Resumption of participation.

* * * * *

(b) *Disenrollment in order to participate in other educational programs.* A person who elects to disenroll in order to receive educational assistance allowance under 38 U.S.C. chapter 34 or to receive an officer adjustment benefit payable under § 21.4703 may not reenroll if he or she has negotiated a check under the provisions of law governing the program elected in lieu of the Post-Vietnam Era Veterans' Educational Assistance Program. A person who elects to disenroll in order to receive educational assistance under the Montgomery GI Bill—Active Duty, as provided in § 21.7045, may not reenroll.

(Authority: 38 U.S.C. 3018A, 3018B, 3202(1), 3222)

(c) *Reenrollment permitted following some disenrollments.* (1) Except as provided in paragraph (b) of this section, a person who has disenrolled may reenroll, but will have to qualify again for minimum participation as described in § 21.5052(a).

(2) If a person does reenroll, he or she may ''repurchase'' entitlement by tendering previously refunded contributions which he or she received upon disenrollment, subject to the conditions of § 21.5052(f).

(Authority: 38 U.S.C. 3221, 3222)

5. In § 21.5145, paragraph (e) is revised to read as follows:

§ 21.5145 Work-study program.

* * * * *

(e) *Payment in advance.* VA will pay in advance an amount equal to the lesser of the following:

(1) 40 percent of the total amount payable under the contract; or

(2) An amount equal to 50 times the applicable minimum hourly wage in effect on the date contract is signed.

(Authority: 38 U.S.C. 3241, 3485)

* * * * *

§ 21.5231 [Amended]

6. Section 21.5231, is amended by removing ''in the same manner as it is applied in the administration of chapters 34 and 36''.

7. In § 21.5250, the introductory text of paragraph (a) and paragraph (a)(3) are revised, and paragraph (a)(16) is added, to read as follows:

§ 21.5250 Courses.

(a) In administering benefits payable under 38 U.S.C. chapter 32, VA and, where appropriate, the State approving agencies shall apply the following sections.

* * * * *

(3) Section 21.4252—Courses precluded.

* * * * *

(16) Section 21.4267—Approval of independent study.

* * * * *

8. In § 21.5270, paragraphs (b) and (j) are removed and reserved; and the introductory text and paragraph (c) are revised, to read as follows:

§ 21.5270 Assessment and pursuit of courses.

In the administration of benefits payable under 38 U.S.C. chapter 32, VA shall apply the following sections.

* * * * *

(c) Section 21.4272—Collegiate course measurement.

(Authority: 38 U.S.C. 3241, 3688)

* * * * *

[FR Doc. 96–4196 Filed 2–26–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–32–7238; FRL–5430–1]

Approval of and Promulgation of Implementation Plans; Louisiana

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Louisiana's request to grant an exemption for the Baton Rouge ozone nonattainment area from the applicable nitrogen oxides (NO_X) transportation conformity requirements. On July 25, 1995, Louisiana submitted to the EPA a State Implementation Plan (SIP) revision request for an exemption (under section 182(b)(1) of the Clean Air Act (Act)) from the transportation conformity requirements for NO_X for the Baton Rouge ozone nonattainment area, which is classified as serious. The State of Louisiana bases its request for Baton Rouge upon a modeling demonstration that additional NO_X reductions would not contribute to attainment in the nonattainment area.

EFFECTIVE DATE: This final rule will be effective on February 12, 1996.

ADDRESSES: Copies of the SIP revision, public comments and the EPA's responses are available for inspection at the following address:

U.S. Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, H. B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne McDaniels or Mr. Quang Nguyen, U.S. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION:

I. Background

Clean Air Act section 176(c)(3)(A)(iii) requires, in order to demonstrate conformity with the applicable SIP, that transportation plans and transportation improvement programs (TIPs) contribute to emissions reductions in ozone nonattainment areas during the period before control strategy SIPs are approved by the EPA. This requirement is implemented in 40 CFR 51.436 through 51.440 (and 93.122 through 93.124), which establishes the so-called ''build/no-build test.'' This test requires a demonstration that the ''Action'' scenario (representing the implementation of the proposed transportation plan/TIP) will result in lower motor vehicle emissions than the ''Baseline'' scenario (representing the implementation of the current transportation plan/TIP). In addition, the ''Action'' scenario must result in emissions lower than 1990 levels.

The November 24, 1993, final transportation conformity rule [1] does not require the ''build/no-build test'' and ''less-than-1990 test'' for NO_X as an ozone precursor in ozone nonattainment areas where the Administrator determines that additional reductions of NO_X would not contribute to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. Clean Air Act section 176(c)(3)(A)(iii), which is the conformity provision requiring contributions to emission reductions before SIPs with emissions budgets can be approved, specifically references Clean Air Act section 182(b)(1). That section requires submission of State plans that, among other things, provide for specific annual reductions of volatile organic compounds (VOC) and NO_X emissions ''as necessary'' to attain the ozone standard by the applicable

[1] ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act,'' November 24, 1993 (58 FR 62188).

attainment date. Section 182(b)(1) further states that its requirements do not apply in the case of NO_X for those ozone nonattainment areas for which the EPA determines that additional reductions of NO_X would not contribute to ozone attainment.

As explained below, the EPA, through an amendment to its transportation conformity rule, has changed the procedural mechanism through which a NO_X exemption from transportation conformity would be granted. Instead of a petition under section 182(f), transportation conformity NO_X exemptions for ozone nonattainment areas that are subject to section 182(b)(1) need to be submitted as SIP revision requests. The Baton Rouge ozone nonattainment area is classified as serious and, thus, is subject to section 182(b)(1).

The EPA published, on August 29, 1995, an interim final rule (60 FR 44762) which amended the transportation conformity rule and changed the statutory authority from section 182(f) to section 182(b)(1) of the Act for areas that are subject to section 182(b)(1). The interim final rule was effective immediately upon publication and provides the means for exempting areas subject to section 182(b)(1) from the NO_X provisions of the transportation conformity rule. In conjunction with the interim rule, the EPA published a proposal providing for further amendments to the transportation conformity rule and describing how the EPA intended to process section 182(b)(1) NO_X waivers (60 FR 44790). On November 14, 1995, the EPA published a final rule (60 FR 57179), after completing notice-and-comment rulemaking, that includes the provisions of the August 29, 1995, interim rule. The November 14, 1995, rule also addresses the NO_X budget requirement.

The July 25, 1995, SIP revision request from Louisiana has been submitted to meet the requirements of section 182(b)(1). A public hearing on this SIP revision request was held on June 29, 1995. The EPA proposed to approve the SIP revision request on October 6, 1995 (60 FR 52348).

The Baton Rouge serious ozone nonattainment area includes the following parishes: East Baton Rouge, West Baton Rouge, Pointe Coupee, Livingston, Iberville, and Ascension. In evaluating the SIP revision request, the EPA considered whether additional NO_X reductions would contribute to attainment of the ozone standard in the Baton Rouge modeling domain, which includes all or part of 20 parishes in Louisiana and covers both attainment as well as nonattainment parishes.

As outlined in the relevant EPA guidance, the use of photochemical grid modeling is the recommended approach for testing the contribution of NO_X emission reductions to attainment of the ozone standard.

A summary of the urban airshed modeling (UAM) demonstration and the EPA's review of the modeling and submittal are contained in the October 6, 1995, proposed rule (60 FR 52348) and the accompanying Technical Support Document. The modeling results show, on a directional basis, that application of NO_X controls in the Baton Rouge ozone nonattainment area would exacerbate peak ozone concentrations in the modeling domain.

II. Public Comments

In August 1994, three environmental groups (Natural Resources Defense Council (NRDC), Sierra Club, and Environmental Defense Fund (NRDC et al.)) submitted joint adverse comments on the proposed approvals of NO_X exemptions for the Ohio and Michigan ozone nonattainment areas. The comments addressed the EPA's general policy regarding NO_X exemptions. The commenters requested that these comments be addressed in all EPA rulemakings dealing with NO_X exemptions. The EPA responded to these comments in a final rulemaking approving a section 182(f) NO_X exemption for the Baton Rouge area. *See* 61 FR 2438, dated January 26, 1996. The technical basis (i.e., UAM demonstration) for the Baton Rouge section 182(b)(1) transportation conformity NO_X exemption is the same as for the section 182(f) exemption. (Please refer to the January 26, 1996, section 182(f) final approval (61 FR 2438) for Baton Rouge for a summary of the NRDC's comments and the EPA's responses.)

In addition, shortly after the close of the 30-day public comment period, the New York State Department of Environmental Conservation (NYSDEC) submitted a letter to the EPA expressing opposition to the proposed Baton Rouge transportation conformity NO_X exemption. For the public record, the EPA has elected to respond to those comments in this rulemaking. The following discussion summarizes the NYSDEC comments and provides the EPA's responses to the comments.

Comment: The NYSDEC expressed concern regarding the claim that VOC only controls reduce ozone levels and geographic extent of ozone exposure since modeling in the northeast shows a need for NO_X reductions as well as VOC to reduce regional ozone. The NYSDEC also questioned certain model assumptions; namely, whether the Federal motor vehicle control program (FMVCP) is assumed in future year (1996 and 1999) emission inventories, and the adequacy of modeling across-the-board reductions for a specific source category exemption.

Response: In the modeling demonstration, the State included in the attainment year (1999) projected emissions inventory the emission reductions expected to result from the Federal Motor Vehicle Emission Control Program. Although the state did not model the mobile emission reductions that would result from transportation conformity, per se, the across-the-board reductions modeled (i.e., a 100 percent reduction in both point source VOC and NO_X emissions combined) far exceed the reductions that would be expected to result from transportation conformity alone. (In the Baton Rouge modeling domain, point source VOC emissions alone comprise 46 percent of the total projected anthropogenic VOC inventory, and point source NO_X emissions alone comprise 57 percent of the total projected NO_X inventory.)

The EPA believes that the State has satisfied the requirements of Chapter 4 of the December 13, 1993, guidance document, ''Guideline for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f),'' by simulating conditions resulting from three emission reduction scenarios (i.e., substantial VOC reductions, substantial NO_X reductions, and substantial VOC/NO_X reductions combined). Consistent with the guidance, the State has demonstrated that, on a directional basis, the areawide predicted maximum 1-hour ozone concentration for each day modeled under the substantial VOC reductions alone strategy is less than or equal to that from substantial NO_X reductions alone or VOC and NO_X reductions combined.

Comment: The NYSDEC stated that there have been voluntary early NO_X reductions from point sources between 1990 and 1994, which seems to imply that improvements in air quality would be affected by these voluntary NO_X reductions as well.

Response: As part of the modeling demonstration, the State included the early NO_X reductions from point sources that had occurred between 1990 and 1994. Since doing so did not alter the conclusion, the EPA believes the State has adequately demonstrated that any additional NO_X reductions would not contribute to attainment of the ozone standard and, therefore, has met the Act's requirements for receiving a NO_X waiver.

Comment: The NYSDEC stated that area source NO_X inventories modeled appeared low by two orders of magnitude, i.e., 0.2 percent versus 20 percent.

Response: The projected area source NO_X inventory modeled (1.0 tons/day) is correct. Area source NO_X emissions comprise only 0.2 percent of the total projected NO_X inventory (479.0 tons/day). Point, on-road mobile, and non-road mobile source NO_X emissions comprise 67.7 percent, 15.4 percent, and 16.7 percent of the total projected NO_X emissions inventory, respectively.

Comment: The NYSDEC urged the EPA to undertake a review of the regional consistency between Baton Rouge and other southeast areas, and that action on the exemption petition be delayed until this review is complete.

Response: The EPA has taken steps to assure that downwind areas will not be negatively impacted by NO_X exemptions. The EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that the NO_X emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State or in another nonattainment area within the same State. This action would be independent of any action taken by the EPA on a NO_X exemption request under section 182(f) or section 182(b)(1). That is, EPA action to grant or deny a NO_X exemption request under section 182(f) or 182(b)(1) for any area would not shield that area from EPA action to require NO_X emission reductions, if necessary, under section 110(a)(2)(D).

The State of Louisiana is included in the superregional photochemical modeling of the eastern United States (U.S.) currently being conducted by the EPA, States, and other agencies as part of the Ozone Transport Assessment Group (OTAG). The OTAG assessment process, which is scheduled to end at the close of 1996, will evaluate regional and national emission control strategies using improved regional modeling analyses. The goal of the OTAG is to reach consensus on additional regional and national emission reductions that are needed to support efforts to attain the ozone standard in the eastern U.S. Upon completion of the modeling, the EPA will evaluate the modeling results and their implications concerning NO_X versus VOC emission controls. The results of this modeling may supersede the UAM demonstration that the EPA is using as the basis for granting this waiver. To continue the waiver for all NO_X source categories, the modeling must continue to show attainment of the ozone standard without the use of additional NO_X controls. The final modeling may demonstrate attainment of the ozone standard using a subset of the possible NO_X emission controls. In this situation, the EPA may continue the waiver for the remaining ''non-controlled'' NO_X sources under section 182(f)(2) of the CAA.

Comment: The NYSDEC disagrees that the NO_X waiver rule should be a Table 3 action for signature by the Regional Administrator and, because of the national implications of the NO_X exemption, believes it should be a Table 1 action.

Response: The NO_X waiver for transportation conformity is a SIP revision request submitted by the State of Louisiana. SIP revisions have been delegated to the Regional Administrator for signature under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. This NO_X waiver is applicable only for the purpose of relieving the need to meet the interim transportation conformity test for the Baton Rouge area. In addition, the policy related to processing the NO_X waivers for transportation conformity has been coordinated at the national level.

III. Effective Date

This rulemaking is effective as of February 12, 1996. The Administrative Procedure Act, 5 U.S.C. 553(d)(1), permits the effective date of a substantive rule to be less than thirty days after publication if the rule ''relieves a restriction.'' Since the approval of the section 182(b)(1) transportation conformity NO_X exemption for the Baton Rouge ozone nonattainment area is a substantive rule that relieves the restrictions associated with the CAA Title I requirements to control NO_X emissions, the transportation conformity NO_X exemption approval may be made effective upon signature by the Regional Administrator.

IV. Final Action

The comments received were found to warrant no significant changes from the proposed to final action on this NO_X exemption request. The primary difference between the proposed and final rulemaking is the addition of the statement that the EPA may require NO_X emission controls in general or on a source-specific basis under section 110(a)(2)(D) of the CAA if future ozone modeling demonstrates that such controls are needed to achieve the ozone standard in downwind areas. Based on subsequent modeling results, the EPA may rescind all or part(s) of the transportation conformity NO_X waiver. Approval of the exemption waives the Federal requirements for transportation conformity applicable to the Baton Rouge ozone nonattainment area. To maintain the waiver, future modeling must demonstrate attainment of the ozone standard without the use of additional NO_X emission controls. (The modeling may demonstrate the need for some NO_X emission controls, necessitating the need for reducing the coverage of the waiver.) Should the EPA rescind the exemption, the State would be required to begin implementing the transportation conformity NO_X requirements.

V. Miscellaneous

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

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

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

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The

Act forbids the EPA to base its actions concerning SIPs on such grounds. (*Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976; 42 U.S.C. 7410(a)(2)).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, the EPA must assess whether various actions undertaken in association with proposed or final regulations 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.

The EPA's final action will relieve requirements otherwise imposed under the CAA and, hence, does not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. This action also will not impose a 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.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial rule, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2) of the CAA).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Conformity, Oxides of nitrogen, Ozone, Transportation conformity.

Dated: February 12, 1996.

Jane N. Saginaw,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

3. Section 52.992 is amended by adding paragraph (c) to read as follows:

§ 52.992 Areawide nitrogen oxides (NO_X) exemptions.

* * * * *

(c) The LDEQ submitted to the EPA on July 25, 1995, a revision to the SIP, pursuant to section 182(b)(1), requesting that the Baton Rouge serious ozone nonattainment area be exempted from the transportation conformity NO_X requirements of the CAA. The Baton Rouge nonattainment area consists of East Baton Rouge, West Baton Rouge, Pointe Coupee, Livingston, Iberville, and Ascension Parishes. The exemption request was based on photochemical grid modeling which shows that additional reductions in NO_X would not contribute to attainment in the nonattainment area. On February 12, 1996, the EPA approved the State's request for an areawide exemption from the transportation conformity NO_X requirements.

[FR Doc. 96–4289 Filed 2–26–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MI28–02–7224; FRL–5324–4]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule; correction.

SUMMARY: On July 26, 1994 the USEPA published a final rule approving Michigan's 1990 base year ozone emission inventory for the Grand Rapids and Muskegon nonattainment areas submitted as a revision to the Michigan state implementation plan (58 FR 37944). The supplementary information to the final rule included errors on the totals of volatile organic compounds (VOC) emissions. The intent of this document is to provide the correct VOC emission totals.

Specifically, on page 37946 of the final rule, the table ''Daily VOC Emissions From All Sources'' incorrectly lists the total VOC emissions in tons per summer weekday (tpd) for the Grand Rapids and Muskegon as 199.29 and 58.53, respectively. The correct total VOC emissions are 203.29 tpd for Grand Rapids, and 59.38 tpd for Muskegon.

EFFECTIVE DATE: This correction is effective February 27, 1996.

FOR FURTHER INFORMATION CONTACT: Charles C. Hatten, Environmental Engineer, Regulation Development Section, Air and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6031.

List of Subjects in 40 CFR Part 52

Environmental protection, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 10, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–4394 Filed 2–26–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 799

[OPPTS–42111I; FRL–4988–9]

RIN 2070–AB94

Withdrawal of Certain Testing Requirements for Office of Water Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the final test rule for the Office of Water Chemicals in 40 CFR 799.5075 by rescinding the 90-day and 14-day testing requirements for chloroethane. The testing requirements are being rescinded because the Agency has received data adequate to meet the data needs for which the test rule was promulgated.

DATES: This amendment shall become effective on February 27, 1996. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern (daylight or standard as appropriate) time on February 27, 1996.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA is amending the final test rule for the Office of Water Chemicals in 40 CFR 799.5075 by rescinding: (1) The 90-day subchronic testing requirement for chloroethane, and (2) the 14-day testing requirement for chloroethane.

I. Background

In the Federal Register of September 21, 1995 (60 FR 48948) (FRL–4972–3), EPA proposed rescinding the 90-day subchronic testing requirement for chloroethane and the 14-day testing requirement for chloroethane. EPA promulgated the rule (FRL–4047–2) establishing these testing requirements pursuant to TSCA section 4(a), and published the final rule in the Federal

Register on November 10, 1993 (58 FR 59667).

EPA proposed rescinding the testing requirements for chloroethane because it received a 14-day single oral dose study from the Dow Chemical Company on May 1, 1995. This study, entitled ''Ethyl Chloride Palatability and 14-day Drinking Water Toxicity Study in Fischer 344 Rats'', concluded that there were no toxicological effects from the drinking water administration of chloroethane to the treated rats at the level of practical saturation. After submission of additional information requested by the Agency (Refs. 2, 2a, 3, and 4), EPA reviewed the study and concluded that the study was adequate to meet the data needs for which the test rule was prepared, to establish a Health Advisory for chloroethane for EPA's Office of Water (Ref. 5). Therefore, EPA is rescinding the 90-day and 14-day testing requirements for chloroethane. The final test rule for Drinking Water Contaminants Subject to Testing (''the Office of Water Chemicals test rule''), which EPA is now amending, is codified in 40 CFR 799.5075.

II. Public Comments

EPA received one public comment from the Dow Chemical Company, the test sponsor for chloroethane, which agreed with the Agency proposal.

III. Amended Testing Requirements

The Office of Water Chemicals test rule at 40 CFR 799.5075 is amended to delete the 14-day and the 90-day subchronic testing requirement for chloroethane. Specifically, parties subject to the test rule will no longer have to comply with 40 CFR 799.5075 (a)(1), (c)(1)(i)(A), and (c)(2)(i)(A).

IV. Economic Analysis

Eliminating these testing requirements will reduce testing costs. Therefore, this amendment should not cause adverse economic impact.

V. Rulemaking Record

EPA has established a docket for this rulemaking (docket number OPPTS–42111I). This docket contains the basic information considered by EPA in developing this rule, appropriate Federal Register notices, and the comment received on the proposal. The rulemaking record includes the following:

(1) Letter from Annette L. Hayes of Latham Watkins to Amber L. Aranda, U.S.E.P.A. transmitting April 28, 1995 Dow Chemical Study (May 1, 1995) (with attachment:).

(a) Dow Chemical Company. Study titled ''Ethyl Chloride: Palatability and 14-Day Drinking Water Toxicity Study in Fischer 344 Rats'' (April 28, 1995).

(2) Facsimile note from Roger A. Nelson, USEPA to Dr. Lynn Pottenger, The Dow Chemical Company requesting information (June 7, 1995) (with attachment:).

(a) Memorandum from Jennifer Orme-Zavaleta, U.S.E.P.A. to Frank Kover, U.S.E.P.A. requesting additional data (June 5, 1995).

(3) Letter from Lynn Pottenger, The Dow Chemical Company to Roger Nelson, U.S.E.P.A., RE: Questions on Chloroethane Study Report (June 9, 1995).

(4) The Dow Chemical Company. Report Addendum to Ethyl Chloride: Palatability and 14-Day Drinking Water Toxicity Study in Fischer 344 Rats (June 9, 1995).

(5) Memorandum from Jennifer Orme-Zavaleta, U.S.E.P.A. to Frank Kover, U.S.E.P.A. Office of Water Review (July 14, 1995).

(6) The Dow Chemical Company. Comment on docket number OPPTS–42111H (FRL–4972–3) (October 16, 1995).

VI. Public Docket

The docket for this rulemaking is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Room B–607 Northeast Mall, 401 M Street SW., Washington, DC 20460.

VII. Other Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this test rule would not have a significant impact on a substantial number of small businesses because the amendment would relieve a regulatory obligation to conduct certain chemical tests.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation 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.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule reduces enforceable duties on any of these governmental entities or the private

sector by revoking rules requiring testing.

D. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this test rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB Control number 2070–0033. This rule would reduce the public reporting burden associated with the testing requirement under the final test rule. A complete discussion of the reporting burden is contained at 58 FR 59680, November 10, 1993.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Chemical export, Hazardous substances, Health effects, Laboratories, Provisional testing, Reporting and recordkeeping requirements, Testing, Incorporation by reference.

Dated: February 11, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

Therefore, 40 CFR, chapter I, subchapter R, is amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5075 is amended by revising paragraphs (a)(1), (c)(1)(i)(A), (c)(2)(i)(A), and (d)(1) to read as follows:

§ 799.5075 Drinking water contaminants subject to testing.

(a) *Identification of test substance.* (1) 1,1,2,2-tetrachloroethane (CAS No. 79–34–5), and 1,3,5-trimethylbenzene (CAS No. 108–67–8) shall be tested as appropriate in accordance with this section.

* * * * *

(c) *Health effects testing*—(1) *Subacute toxicity*—(i) *Required testing.* (A) An oral 14-day repeated dose toxicity test shall be conducted with 1,1,2,2-tetrachloroethane, and 1,3,5-trimethylbenzene in accordance with § 798.2650 of this chapter except for the provisions in § 798.2650 (a), (b)(1), (c), (e)(3), (e)(4)(i), (e)(5), (e)(6), (e)(7)(i), (e)(7)(iv), (e)(7)(v), (e)(8)(vii), (e)(9)(i)(A), (e)(9)(i)(B), (e)(11)(v), and (f)(2)(i). Each substance shall be tested in one mammalian species, preferably a rodent, but a non-rodent may be used. The species and strain of animals used in this test should be the same as those used in the 90-day subchronic test required in paragraph (c)(2)(i) of this section. The tests shall be performed using drinking water. However, if, due to poor stability or palatability, a drinking water test is not feasible for a given substance, that substance shall be administered either by oral gavage, in the diet, or in capsules.

* * * * *

(2) *Subchronic toxicity*—(i) *Required testing.* (A) An oral 90-day subchronic toxicity test shall be conducted with 1,3,5-trimethylbenzene in accordance with § 798.2650 of this chapter except for the provisions in § 798.2650 (e)(3), (e)(7)(i), and (e)(11)(v). The tests shall be performed using drinking water. However, if, due to poor stability or palatability, a drinking water test is not feasible for a given substance, that substance shall be administered either by oral gavage, in the diet, or in capsules.

* * * * *

(d) *Effective date.* (1) This section is effective on December 27, 1993, except for paragraphs (a)(1), (c)(1)(i)(A), (c)(1)(ii)(A), (c)(1)(ii)(B), (c)(2)(i)(A), and (c)(2)(ii)(A). The effective date for paragraphs (a)(2), (c)(1)(ii)(A), (c)(1)(ii)(B), and (c)(2)(ii)(A) is September 29, 1995. Paragraphs (a)(1), (c)(1)(i)(A), and (c)(2)(i)(A) are effective February 27, 1996.

* * * * *

[FR Doc. 96–4254 Filed 2–26–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7185

[ID–933–1430–01; IDI–08955–01, IDI–08932–02, IDI–14647–02]

Public Land Order No. 7157, Correction; Partial Revocation of Public Land Order Nos. 1992 and 2588, and Bureau of Land Management Order Dated January 28, 1952; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct an error in the land description in Public Land Order No. 7157.

EFFECTIVE DATE: February 27, 1996.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

The land description in Public Land Order No. 7157, 60 FR 45372–45373, August 31, 1995, is hereby corrected as follows:

On page 45372, third column, second line from the top of the page which reads ''S½NW¼ and E½SE¼'' is hereby corrected to read ''S½NW¼ and E½SW¼.''

Dated: February 13, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–4331 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–GG–P

43 CFR Public Land Order 7186

[ID–933–1430–01; IDI–05280 01]

Partial Revocation of Public Land Order No. 1374; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 152.60 acres of National Forest System land withdrawn by the Department of Agriculture, Forest Service, for the Johnson Park Administrative Site in the Payette National Forest. The land is no longer needed for the purpose for which it was withdrawn. This action will open the land to surface entry and mining, and will permit the Forest Service to dispose of the land by exchange. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: March 28, 1996.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 1374, which withdrew National Forest System land for the Forest Service's Johnson Park Administrative Site, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 17 N., R. 2 W.,

Sec. 30, lots 3 and 4, and E½SW¼.

The area described contains 152.60 acres in Washington County.

2. At 9 a.m. on March 28, 1996, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, including

location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of land 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: February 13, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–4330 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–GG–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC39

Exemption From Garnishment for Temporary Housing Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule establishes that all financial assistance provided under the Disaster Housing Program is exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver.

EFFECTIVE DATE: March 28, 1996.

FOR FURTHER INFORMATION CONTACT: Laurence W. Zensinger, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4262, (facsimile) 202–646–2730.

SUPPLEMENTARY INFORMATION: Financial assistance provided under the Disaster Housing Program is not currently exempt from garnishment. Financial assistance under the Individual and Family Grant (IFG) Program is exempt from garnishment as specified in 44 CFR 206.131(l). The purpose of financial assistance provided under the Disaster Housing Program is to aid the applicant in obtaining safe housing following a Presidentially declared disaster. When financial assistance provided to an applicant is garnished, the housing needs of the applicant remain unmet. Regulatory exemption from garnishment serves the intent of the Disaster Housing Program. This final rule provides needed protection for applicants who are awarded assistance.

FEMA previously published this as a proposed rule (69 FR 43740, August 23, 1995), inviting comments. We received one brief postcard comment in support of the proposed rule. We are publishing the final rule with no changes from what we published in the proposed rule.

National Environmental Policy Act

This final rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735. To the extent possible this final rule adheres to the regulatory principles set forth in E.O. 12866, but it has not been reviewed by the Office of Management and Budget under the provisions of E.O. 12866.

Paperwork Reduction Act

This final rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This final rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Housing.

Accordingly, 44 CFR part 206 is amended as follows:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

Subpart D—Temporary Housing Assistance

1. The authority citation for part 206 is revised to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329, 5 U.S.C. App. 1; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412, as amended; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Section 206.101(g) is amended to add introductory text to read as follows:

§ 206.101 Temporary housing assistance.

* * * * *

(g) *Forms of Temporary Housing Assistance.* All proceeds received or receivable by the applicant under § 206.101 shall be exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver. No rights under this provision are assignable or transferable.

* * * * *

Dated: February 20, 1996.

William C. Tidball,

Associate Director, Response and Recovery.

[FR Doc. 96–4416 Filed 2–26–96; 8:45 am]

BILLING CODE 6718–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1823 and 1852

RIN 2700–AB68

Drug and Alcohol Testing of Contractor Employees

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule implements the Civil Space Employee Testing Act of 1991, which requires NASA contractors to institute and maintain a program for achieving a drug and alcohol-free workforce. Contractor programs shall provide for preemployment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees responsible for safety-sensitive, security, or National security functions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance.

EFFECTIVE DATE: March 28, 1996.

FOR FURTHER INFORMATION CONTACT: David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

The Civil Space Employees Testing Act of 1991, Public Law 102–195, sec. 21, 105 Stat. 1616 to 1619, requires NASA to prescribe regulations that require testing of NASA contractor

employees conducting safety-sensitive, security, and National security functions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. NASA published a proposed rule on July 13, 1993, 58 FR 37697. Public comments on the proposed rule have been considered in developing this rule.

Changes to Rule

A definition has been added to 1823.570–2 for the phrase ''use, in violation of applicable law or Federal regulation, of alcohol.'' The definition of ''employee in a sensitive position'' has been expanded to include any applicant who is interviewed for a sensitive position.

In response to public comments, 1823.570–3 has been revised to add a contract threshold of $5 million, clarify application of the clause, and revise the exception for ''commercial products'' to cover ''commercial items.'' The exception for contracts performed outside the U.S. has been removed. However, the clause has been revised to address testing outside the U.S.

Editorial changes have been made to 1823.570–4 to shorten and, in response to a public comment, clarify the section.

In response to a public comment, paragraph (b) of the clause at 1852.223–74 has been revised to remove the discussion of NASA Management Instruction (NMI) 3792.3B, ''NASA Plan for a Drug-Free Workplace.'' Appendix C of the NMI, sets forth guidelines that NASA follows in making determinations as to which of its employees are in sensitive positions. A contractor may follow these NASA guidelines in making determinations as to which of its employees performing on the contract are ''employee(s) in a sensitive position.'' However, there is no need for NASA to include this guidance in the contract.

In response to a public comment, paragraph (b) has been revised to allow establishment of testing and rehabilitation programs in cooperation with other contractors or organizations.

To give contractors flexibility in tailoring their programs to test for the use of controlled substances that pose the greatest threat to safety, security, or National security, paragraph (b)(3) of the clause requires testing only for marijuana and cocaine but allows the contractor to test for other controlled substances.

Paragraph (b)(4) of the clause incorporates testing procedures established by the Department of Transportation in 49 CFR part 40.

Paragraphs (c) and (d) of the clause are combined and clarified.

In response to public comments, a paragraph addressing labor agreements has been added. It uses language from the Department of Energy rule at 10 CFR 707.15 and the NASA rule proposed for NASA employees (58 FR 36159, July 6, 1993, proposed for 14 CFR 1272.104).

In response to public comments, paragraph (g) has been revised to state that the clause does not apply to any subcontract for commercial items.

Starting Date for Drug and Alcohol Testing

NASA requested comments on the amount of time that contractors will need, following contract award, to begin their drug and alcohol testing programs in order to meet the requirements of the proposed contract clause. Estimates included ''12 to 18 months,'' ''24 to 36 months,'' or longer. Negotiation of labor agreements was cited as requiring considerable time. Based on these comments, NASA has revised the clause to address labor agreements. The rule does not otherwise specify the amount of time that is considered reasonable for implementing the required testing. As with other elements of contract performance, it is anticipated that the contractor will make sufficient progress on implementing this program to ensure contract performance.

Procedural Requirements

Review Under the Regulatory Flexibility Act

The rule was reviewed under the Regulatory Flexibility Act of 1980. NASA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Review Under the Paperwork Reduction Act

Under 5 CFR 1320.5(b)(2)(i), NASA is required to inform potential persons who are to respond to the collection of information that such persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Under 5 CFR 1320.5(b)(2)(ii)(C), this paragraph meets that display requirement by providing the following statement: information collection associated with this rule has been approved under OMB Control Numbers 2700–0085 and 2700–0089.

List of Subjects in 48 CFR Parts 1823 and 1852

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1823 and 1852 are amended as follows:

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

1. The authority citation for 48 CFR Parts 1823 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. Subpart 1823.5 is added to read as follows:

Subpart 1823.5—Drug-Free Workplace

Sec.

1823.570 Drug- and alcohol-free workforce.
1823.570–1 Scope.
1823.570–2 Definitions.
1823.570–3 Contract clause.
1823.570–4 Suspension of payments, termination of contract, and debarment and suspension actions.

1823.570 Drug- and alcohol-free workforce.

1823.570–1 Scope.

Sections 1823.570 to 1823.570–4 set forth NASA requirements for mandatory drug and alcohol testing of certain contractor personnel under section 203, National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473, 72 Stat. 429; and Civil Space Employee Testing Act of 1991, Public Law 102–195, sec. 21, 105 Stat. 1616 to 1619.

1823.570–2 Definitions.

As used in this subpart *employee* and *controlled substance* are as defined in FAR 23.503. The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements of 1823.570 to 1823.570–4 and the clause at 1852.223–74.

Employee in a sensitive position means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence; and includes any employee performing in a position designated ''mission critical'' pursuant to the clause at 1852.246–70. The term also includes any applicant

who is interviewed for a position described in this paragraph.

Use, in violation of applicable law or Federal regulation, of alcohol includes having, while on duty or during a preemployment interview, an alcohol concentration of 0.04 percent by weight or more in the blood, as measured by chemical test of the individual's breath or blood. An individual's refusal to submit to such test is presumptive evidence of use, in violation of applicable law or Federal regulation, of alcohol.

1823.570–3 Contract Clause.

The contracting officer shall insert the clause at 1852.223–74, ''Drug- and Alcohol-Free Workforce,'' in all solicitations and contracts containing the clause at 1852.246–70, ''Mission Critical Space Systems Personnel Reliability Program,'' and in other solicitations and contracts exceeding $5 million in which work is performed by an employee in a sensitive position. However, the contracting officer shall not insert the clause at 1852.223–74 in solicitations and contracts for commercial items (see FAR parts 2 and 12).

1823.570–4 Suspension of payments, termination of contract, and debarment and suspension actions.

The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and debarment and suspension of a contractor relative to failure to comply with the clause at 1852.223–74. Causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are the following:

(a) The contractor fails to comply with paragraph (b), (c), or (d) of the clause at 1852.223–74; or

(b) Such a number of contractor employees in sensitive positions having been convicted of violations of criminal drug statutes or substantial evidence of drug or alcohol abuse or misuse occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug- and alcohol-free workforce.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.223–74 is added to read as follows:

1852.223–74 Drug- and alcohol-free workforce.

As prescribed in 1823.570–3, insert the following clause:

Drug- and Alcohol-Free Workforce

(March 1996)

(a) *Definitions.* As used in this clause the terms ''employee,'' ''controlled substance,'' ''employee in a sensitive position,'' and ''use, in violation of applicable law or Federal regulation, of alcohol'' are as defined in 48 CFR 1823.570–2.

(b) (1) The Contractor shall institute and maintain a program for achieving a drug- and alcohol-free workforce. As a minimum, the program shall provide for preemployment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Contractor may establish its testing or rehabilitation program in cooperation with other contractors or organizations.

(2) This clause neither prohibits nor requires the Contractor to test employees in a foreign country. If the Contractor chooses to conduct such testing, this does not authorize the Contractor to violate foreign law in conducting such testing.

(3) The Contractor's program shall test for the use of marijuana and cocaine. The Contractor's program may test for the use of other controlled substances.

(4) The Contractor's program shall conform to the ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'' published by the Department of Health and Human Services (59 FR 29908, June 9, 1994) and the procedures in 49 CFR part 40, ''Procedures for Transportation Workplace Drug Testing Programs,'' in which references to ''DOT'' shall be read as ''NASA'', and the split sample method of collection shall be used.

(c) (1) The Contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in a sensitive position in any instance where a test conducted and confirmed under the Contractor's program indicates that such individual has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(2) The Contractor's program shall further prohibit any such individual from working in a sensitive position on a NASA contract, unless such individual has completed a program of rehabilitation described in paragraph (d) of this clause.

(3) The Contractor's program shall further prohibit any such individual from working in any sensitive position on a NASA contract if the individual is determined under the Contractor's program to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance and the individual meets any of the following criteria:

(i) The individual had undertaken or completed a rehabilitation program described in paragraph (d) of this clause prior to such use;

(ii) Following such determination, the individual refuses to undertake such a rehabilitation program;

(iii) Following such determination, the individual fails to complete such a rehabilitation program; or

(iv) The individual used a controlled substance or alcohol while on duty.

(d) The Contractor shall institute and maintain an appropriate rehabilitation program which shall, as a minimum, provide for the identification and opportunity for treatment of employees whose duties include responsibility for safety-sensitive, security, or National security functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

(e) The requirements of this clause shall take precedence over any state or local Government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the requirements of this clause.

(f) For any collective bargaining agreement, the Contractor will negotiate the terms of its program with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change the requirements of this clause. Employees covered under collective bargaining agreements will not be subject to the requirements of this clause until those agreements have been modified, as necessary; provided, however, that if one year after commencement of negotiation the parties have failed to reach agreement, an impasse will be determined to have been reached and the Contractor will unilaterally implement the requirements of this clause.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts in which work is performed by an employee in a sensitive position, except subcontracts for commercial items (see FAR parts 2 and 12).

(End of clause)

[FR Doc. 96–4428 Filed 2–26–96; 8:45 am]

BILLING CODE 7510–01–M

Proposed Rules

Federal Register
Vol. 61, No. 39
Tuesday, February 27, 1996

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 319 and 381

[Docket No. 92–024E]

RIN 0583–AB51

Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term—Extension of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; extension of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending the comment period for the proposed rule, ''Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term'' for an additional 90 days. This action responds to requests to allow additional time for comments.

DATES: Comments must be received on or before May 28, 1996.

ADDRESSES: Written comments should be sent in triplicate to, Policy, Evaluation and Planning Office, Attn: FSIS Docket Clerk, DOCKET No. 92–024P, Room 4352, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Mr. Charles R. Edwards, Director, Product Assessment Division, at (202) 254–2565.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION: On December 29, 1995, FSIS published the proposed rule ''Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term'' (60 FR 67474). The rule proposes to establish a general definition and standard of identity for standardized meat and poultry food products that have been modified to qualify for use of certain expressed nutrient content claims as part of the product name. These products would be identified by a nutrient content claim, such as ''fat free,'' in conjunction with an appropriate standardized product name, e.g., ''fat free frankfurter.'' The general standard proposes to set requirements that would allow for modified versions of standardized meat and poultry food products, i.e., ''substitute standardized products.'' These products would be formulated and processed with ingredients otherwise not in, or in amounts greater than that allowed by FSIS regulatory food standards in 9 CFR parts 319 and 381, subpart P.

FSIS reiterates that the standard of identity proposed would require that a modified meat or poultry product: (1) In general, possess performance characteristics that are similar to those of the product for which it substitutes, (2) contain the stipulated amount of a mandatory ingredient (e.g., meat or poultry) that is required to be in the traditional standardized food, and (3) is labeled to convey the allowed differences between the substitute and standardized product.

FSIS will be considering broader reform of its standards system that would provide firms greater flexibility in product formulation while fully informing consumers regarding the content of the product. As part of its overall standards reform strategy, FSIS is developing an Advance Notice of Proposed Rulemaking (ANPR) that will ask questions and solicit information about alternative regulatory approaches to standards including revising or eliminating meat and poultry content requirements.

In the interest of receiving information pertaining to food standards, FSIS is extending the comment period for the proposed rule an additional 90 days. This action responds to requests to extend the comment period.

Done at Washington, DC, on: February 22, 1996.

Michael R. Taylor,
Acting Under Secretary for Food Safety.

[FR Doc. 96–4414 Filed 2–22–96; 3:35 pm]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AEA–09]

Proposed Revocation of Class D Airspace and Class E4 Extensions; Plattsburgh AFB, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revoke Class D airspace designated as a surface area for Plattsburgh Air Force Base, New York. The proposed rule would also include revocation of the Class E4 surface areas designated as an extension to Class D airspace. As a result of the Base Realignment and Closure program, this airport has eliminated all flight operations.

DATES: Comments must be received on or before March 28, 1996.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, AEA–530, Docket No. 95–AEA–09, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430. An informal docket may also be examined during normal business hours in the System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AEA–09''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments received will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71). This proposed rule would revoke existing Class D airspace and associated Class E4 airspace extensions, at Plattsburgh AFB, Plattsburgh, NY. Class D and Class E airspace designations are published in Paragraph 5000 and 6004, respectively, of FAA Order 7400.9C, dated August 17, 1995 and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

Paragraph 5000—Subpart D—Class D airspace areas designated as a surface area for an airport.

* * * * *

AEA NY D Plattsburgh, NY [Removed]

* * * * *

Paragraph 6004—Subpart E—Class E airspace designated as an extension to a Class D area.

* * * * *

AEA NY E4 Plattsburgh, NY [Removed]

* * * * *

Issued in Jamaica, New York, on January 29, 1996.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 96–3982 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AEA–11]

Proposed Revocation of Class D Airspace and Class E5 Airspace; Calverton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revoke Class D airspace designated as a surface area for Calverton Airport, Naval Weapons Industrial Reserve Plant (NWIRP), on Long Island, New York. The air traffic control tower is no longer operating, and there are no current plans to reestablish a tower control function at this airport. The proposed rule would also include revocation of the Class E5 airspace extending upward from 700 feet above the surface of the earth. The airport use was associated with the aircraft repair facilities at the Calverton Airport. Recent reductions in these functions have resulted in termination of flight operations at Calverton Airport.

DATES: Comments must be received on or before March 28, 1996.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, AEA–530, Docket No. 95–AEA–11, FAA Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430. An informal docket may also be examined during normal business hours in the System Management Branch, AEA–530, FAA Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, System Management Branch, AEA–530, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AEA–11''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments received will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, AEA–530, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71). This proposed rule would revoke existing Class D surface airspace and overlying Class E5 airspace designated as extending upward from 700 feet above the surface, at Calverton Airport, NY. The air traffic control tower and the instrument operations, which this airspace was supporting, no longer exist. Flight operations at this airport have ceased. Class D and Class E airspace designations are published in Paragraph 5000 and 6005, respectively, of FAA Order 7400.9C, dated August 17, 1995 and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

Paragraph 5000—Subpart D—Class D airspace areas designated as a surface area for an airport.

* * * * *

AEA NY D Calverton, NY—[Removed]

* * * * *

Paragraph 6005—Subpart E—Class E airspace designated as airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Calverton, NY—[Removed]

* * * * *

Issued in Jamaica, New York, on January 29, 1996.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 96–3981 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AEA–13]

Proposed Establishment of Class E5 Airspace Clinton CO Airport, Plattsburgh, NY., and Revocation of Class E5 Airspace, Plattsburgh AFB, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify Class E5 airspace extending upward from 700 feet above the earth for Clinton County Airport, Plattsburgh, New York. There is existing E5 airspace for both the Plattsburgh AFB and Clinton County Airport. As result of the Base Closure and Realignment Program, the Plattsburgh AFB has closed, necessitating redesign of the Class E5 airspace.

DATES: Comments must be received on or before March 28, 1996.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, AEA–530, Docket No. 95–AEA–13, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430. An informal docket may also be examined during normal business hours in the System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111 John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AEA–13''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments received will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishing Class E5 airspace at Clinton County Airport and revoking the existing E5 airspace at Plattsburgh AFB, Plattsburgh, NY, to accommodate current SIAPs and for IFR operations at the Clinton County Airport. The Plattsburgh AFB has closed and the VALCOUR TACAN has been decommissioned. The Clinton County Airport has a VOR or GPS RWY 19 SIAP and an ILS RWY 1 SIAP. The modification and description proposed would be based on existing navigation devices, and would accommodate these SIAPs and instrument flight rules (IFR) operations at Clinton County Airport. Class E5 airspace areas extending upward from 700 feet or more above the earth are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995 and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 Amended

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995 and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the earth.

* * * * *

AEA NY E5 Plattsburgh, NY [Removed]

Plattsburgh AFB, Plattsburgh, NY

* * * * *

AEA NY E5 Plattsburgh, NY [New]

Clinton County Airport, Plattsburgh, NY
(Lat. 44°41′15″ N, long. 73°31′28″ W)
Plattsburgh VORTAC
(Lat. 44°41′06″ N., long. 73°31′22″ W)

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of Clinton County Airport and within 4.4 miles each side of the Plattsburgh VORTAC 350° radial extending from the 9.5-mile radius of the Clinton County Airport to 12 miles north of the VORTAC and 4 miles each side of the Plattsburgh VORTAC 155° radial extending from the 9.5-mile radius of the Clinton County Airport to0 18.5 miles southeast of the VORTAC.

* * * * *

Issued in Jamaica, New York, on January 29, 1996.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 96–3974 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–13–M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Post-Investigation Retention and Use of Confidential Business Information From Investigation on Unfair Practices in Import Trade; Decision Not to Issue Final Rules

AGENCY: U.S. International Trade Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Commission will not adopt at this time changes to certain rules for investigations and related proceedings under section 337 of the Tariff Act of 1930. The proposed amendments would have codified a proposed new policy of allowing counsel who are signatories to an administrative protective order (APO) to retain certain confidential business information (CBI) from an investigation for prescribed periods and to use that CBI for certain limited purposes.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. Hearing-impaired individuals can obtain information concerning the proposed rulemaking by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking was published at 60 FR 7723 (Feb. 9, 1995). The American Bar Association's Section on International Law and Practice and the ITC Trial Lawyers Association were the only organizations that commented on the proposed rules. The Commission has determined not to resolve these rules issues through rulemaking at this time. Post-investigation use and retention of CBI will continue to be governed by the terms of the APO issued by the presiding administrative law judge in each investigation.

By Order of the Commission.

Dated: February 13, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–3953 Filed 2–26–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF DEFENSE

Corps of Engineers

33 CFR Part 334

Chesapeake Bay Off Fort Monroe, VA, and Canaveral Harbor Adjacent to the Navy Pier at Port Canaveral, FL; Restricted Areas

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps proposes to amend the regulations which establish a restricted area in the waters off of Fort Monroe, which is located at Hampton Roads in the Chesapeake Bay. The purpose of the amendment is to increase the size of the restricted area to protect sensitive test equipment operated by the Navy in that area. The equipment is susceptible to damage by commercial fishing vessels, anchoring and dragging. The Corps also proposes to amend the regulations which establish a restricted area in Canaveral Harbor in the waters adjacent to the Navy pier at Port Canaveral, Florida. This amendment concerns the replacement of a warning light system in the Canaveral area. The change is necessary because the existing rules refer to a red ball displayed on the Port Canaveral water tower which has been dismantled. The light has been relocated.

DATES: Comments must be submitted on or before April 12, 1996.

ADDRESS: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783, or questions concerning the Fort Monroe restricted area may be directed to Ms. Alice G. Riley of the Norfolk District at (804) 441–7389, and questions concerning the Port Canaveral restricted area may be directed to Ms. Shirley Stokes of the Jacksonville District at (904) 232–1668.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is proposing to amend the regulations in 33 CFR Part 334. The Commanding Officer, Naval Surface Warfare Center, Dahlgren Detachment, Fort Monroe, Virginia has requested an amendment to the regulations in 334.360, which establish a restricted area in the Chesapeake Bay off Fort Monroe, Virginia. The restricted area was established in 1948 and last amended October 31, 1990. The last revision resulted in reducing the size of the restricted area to accommodate Coast Guard Range lights. According to the Navy, this change if approved, will slightly enlarge the area over that in effect prior to the 1990 change. The restricted area is necessary to protect Government-owned test equipment. The Navy maintains an underwater test range used to develop underwater sensors at that site off Fort Monroe, Virginia. There is no prohibition on vessels transiting the area. The restriction on anchoring, trawling, fishing and dragging in the restricted area remain unchanged. In paragraph (b)(1), of the regulations, the words ''danger zone'' are incorrect and replaced by ''restricted area''. Also in subparagraph (b)(1) we are identifying a local Agency to contact in the event further information is necessary regarding the area or the prohibitions listed.

The Commanding Officer, Naval Ordnance Test Unit, Cape Canaveral, Florida, has requested the regulations which establish a restricted area in the waters adjacent to the Navy pier at Port Canaveral, Florida, be amended to delete a reference to a red warning light on a water tower and replace it with a new warning light system. The regulation will be amended to show that the area will be closed when a red square flag (bravo), and depending on the status of the hazardous operation, either an amber or red beacon, steady burning or rotating, day or night, is displayed from any of the three berths along the wharf. No other changes to these regulations are proposed.

Copies of all comments received in response to proposed changes to 33 CFR 334.360 will be available for inspection at the Norfolk District Office located at Fort Norfolk, 803 Front Street, Norfolk, Virginia. Comments received in response to the proposed change to 33 CFR 334.530 will be available for inspection at the Jacksonville District Office at 400 West Bay Street, Jacksonville, Florida.

Economic Assessment and Certification

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply. These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps expects that the economic impact of the changes to the restricted areas will have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

National Environmental Policy Act Certification

An environmental assessment will be prepared for these proposed actions. We have preliminarily concluded, based on the minor nature of these proposed amendments that the action will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required. Copies of the environmental assessment may be reviewed at the District Offices listed at the end of **SUPPLEMENTARY INFORMATION**, above.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Transportation, Waterways.

For the reasons set out in the preamble, 33 CFR Part 334 is proposed to be amended as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.360 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 334.360 Chesapeake Bay off Fort Monroe, Virginia; restricted area, U.S. Naval Base and Naval Surface Weapons Center

(a) The area. Beginning at latitude 37°01′03″, longitude 076°17′52″; thence to latitude 37°01′00″, longitude 076°16′11″; thence to latitude 36°59′43″, longitude 076°16′11″; thence to latitude 36°59′18″, longitude 076°17′52″; thence to latitude 37°00′05″, longitude 076°18′18″; thence north along the seawall to the point of beginning.

(b) The regulations. (1) Anchoring, trawling, fishing and dragging are prohibited in the restricted area, and no object, either attached to a vessel or otherwise, shall be placed on or near the bottom unless authorized by the Facility Manager, Naval Surface Warfare Center, Dahlgren Division Coastal Systems Station Detachment, Fort Monroe, Virginia.

* * * * *

3. Section 334.530 is amended by revising paragraph (b)(2) to read as follows:

§ 334.530 Canaveral Harbor adjacent to the Navy Pier at Port Canaveral, Fla.; restricted area.

* * * * *

(b) * * *

(2) The area will be closed when a red square flag (bravo), and depending on the status of the hazardous operation, either an amber or red beacon, steady burning or rotating, day or night, when displayed from any of the three berths along the wharf.

* * * * *

Dated: February 13, 1996.

Joseph G. Graf,

Colonel, U.S. Army, Executive Director of Civil Works.

[FR Doc. 96–4346 Filed 2–26–96; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 264, 265, and 266

[EPA/OSW–FR–95– ; SWH–FRL–5430–5]

CEMS Demonstration Announcement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for proposals.

SUMMARY: The Office of Solid Waste, U.S. Environmental Protection Agency, plans to conduct a demonstration of particulate matter (PM) and total mercury (Hg) Continuous Emissions Monitoring Systems (CEMS) for stack monitoring of hazardous waste combustors (e.g., incinerators, cement kilns, and light-weight aggregate kilns that burn hazardous waste). The purpose of this notice is to solicit proposals from vendors that are interested in participating in the demonstration. EPA will select vendors to participate in the demonstration based on specified evaluation criteria.

DATES: Proposals must be submitted by May 7, 1996.

ADDRESSES: Vendors must submit an original and two copies of their proposal to H. Scott Rauenzahn, U.S. Environmental Protection Agency, 401 M Street, SW (5302W), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For information on this request for proposals, contact H. Scott Rauenzahn in the Office of Solid Waste at 703–308–8477 (FAX: 703–308–8433).

SUPPLEMENTARY INFORMATION: EPA plans to conduct a demonstration to determine whether PM and total Hg CEMS are sufficiently developed for use to document compliance with emission standards for hazardous waste combustors. The demonstration has two phases: (1) demonstration of ability to comply with the Agency's draft performance specifications; and (2) demonstration of long term endurance over a period of six months to one year.

I. CEMS Performance Specifications

The Agency's draft performance specifications contain requirements for: a one-week test period for calibration and zero drift; relative accuracy assessment against EPA manual reference methods; a calibration error check (if applicable); an interference test (if applicable); and demonstration to the EPA that other requirements, such as response time and data recorder scale, are met. The draft specifications are available on EPA's Technology Transfer Network (TTN). The files are *PM—PS.ZIP* for PM and *HG—PS.ZIP* for Hg. They can be found in the Emission Measurement Technical Information (EMTIC) bulletin board's ''Continuous Emissions Monitoring'' area.

The dial-in number for the TTN BBS is (919) 541–5742. That number can accommodate 14.4k kbps. Settings are 8 (Data), No parity, 1 (Stop), and Full duplex. The BBS can be reached on the internet via TELNET at ''ttnbbs.rtpnc.epa.gov''. The system is off-line Mondays from 8 am until 12 noon ET. For help using the BBS, dial (919) 541–5384.

In addition, the draft performance specifications are available in the EPA RCRA Docket, Docket number F–96–RCSP–FFFFF. The docket is located at U.S. Environmental Protection Agency, Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. The RCRA Docket is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling 703–603–9230. The public may copy a maximum of 100 pages from any document at no cost. Additional copies cost $0.15 per page.

II. Description of the Demonstration

EPA seeks vendors to participate in the demonstration that will supply, install, and operate the CEMS at no charge to the government. The Agency will select participants based on their proposals according to the selection criteria discussed below. The test site(s) will be selected by EPA. EPA will also provide site coordination and oversight, and will conduct the manual method reference measurements.

The vendors will conduct the demonstration under EPA oversight, and will provide to EPA at no charge and before removing the CEMS from the test site all data and information on the design of the CEMS and its operation and maintenance during the demonstration. EPA will present the results of the demonstration in a report.

At least one CEMS of each type (PM and total Hg) that participates in the demonstration will be selected for a long term (e.g., 6–12 month) endurance test.

The testing is scheduled to start in May 1996.

III. Vendor Proposals

Proposals should contain the following: a detailed description of the design, operation, and maintenance of the CEMS; the performance specifications of the device (including calibration and zero drift, detection limits, range, and accuracy); a detailed description of the calibration procedure(s) and standards; vendor generated test data pertinent to CEMS performance and calibration; field data demonstrating performance; a description of how the vendor will meet the responsibilities of supplying, installing, and operating the CEMS; and a statement that the vendor accepts the conditions of the program as presented in this notice.

EPA will select vendors for participation in the demonstration using the criteria presented below. Vendors selected after a preliminary selection must submit a site-specific installation plan based on site-specific information that the Agency will provide. This plan should include details such as: (1) the strategy to be used for handling the problem of liquid aerosol if the site uses

a low temperature, wet air pollution control system; or (2) how adequate purge air and temperature would be maintained to prevent fouling of the optics or optical access, if applicable. In other words, the site-specific installation plan should describe all measures that would be taken to ensure compliance with the performance specifications if the site itself bought the CEMS.

EPA will review the site-specific installation plans and make a final selection of participants.

IV. Selection Criteria

EPA will use the following selection criteria as guidelines for choosing CEMSs to participate in the demonstration and endurance tests. Each CEMS will be scored on a scale of 1 to 10 on each criterion (10 being the best score), and a total score calculated using the weighting factors indicated in brackets. Starting from the highest scoring CEMS and working down, as many CEMSs will be selected for participation as possible commensurate with the resources available and the capacity of the test site to accommodate additional CEMSs.

A prerequisite for consideration is that a CEMS must be able to monitor PM or Hg continuously and record measurements over the specified averaging periods. For this effort, EPA defines a CEMS as sampling the stack gas continuously and making measurements every 15 seconds. One minute block averages are calculated by averaging the four previous 15-second readings. Rolling averages are then calculated every minute using all one-minute averages obtained during the averaging period. The averaging periods are 10-minute, one-hour (60 minutes), and 2-hours (120 minutes) for PM, and 10 hours (600 minutes) for Hg. Only CEMSs that have a data availability factor of at least 90% [1] will be considered, unless no CEMSs can perform at that level.

Phase I: Selection Criteria for the Demonstration Test

(1) *Commercial Availability.* The CEMS should be commercially available as documented by product literature, a list of installation locations, and references. A CEMS that has been installed and successfully field demonstrated to meet performance specifications similar to those referenced here at more than 100 stacks will receive the highest score. One that is available as a prototype only, with no firm commercialization plans in place that would lead to availability within the year, will receive the lowest score. [25%]

(2) *Vendor Support.* The CEMS should be provided, installed, and operated by the vendor at no charge to the government. It is expected that the vendor will have personnel on-site to run the CEMS, carry out CD and ZD checks if needed, perform the CE check (if applicable), monitor CEMS performance during RA testing, and provide any trouble shooting or maintenance that may be required. It is also expected that all data will be recorded and copies provided to EPA at the test site and at no charge: CD and ZD checks (if automatic adjustments are made the CD or ZD before adjustment or the amount of adjustment must be recorded), CE tests, RA tests, and interference checks. Willingness to guarantee all of the above will receive the highest score, none of the above the lowest score. [25%]

(3) *Potential for CEMS to Meet Performance Specifications.* Documentation supplied by the vendor in the proposal should provide an indication that the CEMS can be expected to: (1) meet the performance specifications for CD, ZD, CE, RA, interferences, recorder scale, and response time; and (2) meet detection limits of less than 7.0 mg/dscm for PM and 5.0 μg/dscm for Hg. Recorder scale (and span) should be greater than or equal to 210 mg/dscm and 1400 μg/dscm respectively for PM and Hg. The response time, the time interval between the start of a step change in the system input and the time when the data recorder displays 95 percent of the final stable value, should not exceed 2 minutes. Ability to meet all of the specifications will receive the highest score, ability to meet none of the specifications will receive the lowest score. [35%]

(4) *Other Performance Requirements.* The CEMS design (as evaluated from information supplied in the proposal pertaining to a description of the CEMS and measurement principle and/or supplied test data) should be appropriate relative to the requirements of the performance specification and the application to monitoring stack emissions from hazardous waste combustors (i.e., hazardous waste incinerators and hazardous waste burning cement and light-weight aggregate kilns). For PM CEMSs, this means:

(a) The CEMS should be maximally sensitive to PM in the 0.1 to 10 μ size range; and

(b) The CEMS should not be sensitive to liquid water aerosol.

For Hg CEMS this means:

(a) The CEMS vendor must have demonstrated, at a minimum, the ability of the CEMS to detect vapor phase Hg, Hg on PM, and $HgCl_2$, and report the sum of these concentrations as total Hg; and

(b) No interferences (see performance specification). [15%]

Modifications to Installation Plan. Vendors that the Agency selects based on the criteria discussed above for participation in the demonstration test must submit an installation plan. The proposed installation described in the plan must be appropriate relative to the requirements of the performance specification and the application to monitoring stack emissions from the hazardous waste combustor that the Agency specifies. In particular, factors such as flue gas conditions (whether it is a saturated low temperature stream, for example) and purge requirements (flow rate and temperature to ensure that optics and access are not fouled) must be taken into account in the installation plan. If EPA determines that the proposed installation plan is not appropriate, the vendor may be required to revise the plan. If the vendor is unwilling to make the necessary changes, the CEMS may be dropped from the test program.

Phase II: Selection Criteria for the Endurance Test

The Agency will select CEMSs for participation in the long-term endurance test based on: (1) performance of the CEMS during the demonstration test in terms of ability to meet the performance specifications [75%]; and (2) maintenance requirements based on vendor information and experience gained during the demonstration test [25%].

V. Disclaimer

Neither acceptance by EPA for participation in this demonstration nor successful completion of the demonstration shall guarantee that EPA or any other federal agency or government entity shall accept any instrument, or related procedure or technology, or any portion thereof, for the purpose of the measurement of emissions from any regulated facility.

Dated: February 1, 1996.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 96–4388 Filed 2–26–96; 8:45 am]

BILLING CODE 6560–50–P

[1] Since a source would not be allowed to burn hazardous waste if the CEMS is not measuring and recording data, the CEMS must have a high data availability factor.

Notices

Federal Register
Vol. 61, No. 39
Tuesday, February 27, 1996

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

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to American Medical Products of Burlingame, California, an exclusive license for U.S. Patent Application Serial No. 08/145,546 filed November 4, 1993 and U.S. Patent Application Serial No. 08/423,911 filed April 13, 1995, both entitled ''Hypoallergenic Natural Rubber Products from *Parthenum argentatum* (Gray) and other Non-*Hevea brasiliensis* Species.'' Notice of Availability for U.S. Patent Application Serial No. 08/145,546 was published in the Federal Register on June 21, 1994. Serial No. 08/423,911 is a division of Serial No. 08/145,546.

DATES: Comments must be received on or before April 29, 1996.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as American Medical Products has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,
Assistant Administrator.

[FR Doc. 96–4424 Filed 2–26–96; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

California Coast Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The California Coast Province Advisory Committee (PAC) will meet on March 7 and 8, 1996, at the Brass Rail Inn, 3188 Redwood Drive, Redway, California. On March 7 the meeting will begin at 8:30 a.m. and continue until 5:00 p.m. On March 8 the meeting will begin at 8:00 a.m. and conclude at 4:00 p.m. Agenda items to be covered include: (1) Fuels treatment presentation; (2) North Fork Eel River watershed presentation; (3) Discussion of Fiscal Year 1997 watershed restoration project selection; (4) Develop Northwest Forest Plan implementation monitoring team; (5) Report and recommendation from timber salvage subcommittee; (6) Agency updates on implementing the Northwest Forest Plan; (7) Public comment; and (8) Develop agenda for next meeting. If time allows, additional items may be discussed, including update on coho salmon Memorandum of Understanding and draft Klamath Province Advisory Committee letter concerning rechartering Province Advisory Committees. All California Coast Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Daniel Chisholm, USDA, Forest Supervisor, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, California 95988, (916) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, California 95988, (916) 934–3316.

Dated: February 12, 1996.

Daniel K. Chisholm,
Forest Supervisor.

[FR Doc. 96–4406 Filed 2–26–96; 8:45 am]

BILLING CODE 3410–FK–M

Yakima Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakima PIEC Advisory Committee will meet on March 7, 1996 at the Cle Elum Ranger District Office, 803 W. 2nd Street, Cle Elum, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m. This meeting will include discussion of the ten key issues addressed by the Snoqualmie Pass Adaptive Management Area Environmental Impact Statement. If time allows, further discussion of management of dry eastside forest ecosystem will occur. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801–5933, 509–662–4335.

Dated: February 13, 1996.

Paul Hart,
Designated Federal Official, Wenatchee National Forest.

[FR Doc. 96–4354 Filed 2–26–96; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Grain Inspection Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting.

Name: Grain Inspection Advisory Committee.

Date: March 20–21, 1996.

Place: Holiday Inn, Kansas City Airport, 11832 Plaza Circle, Kansas City, MO.

Time: 8:30 a.m. March 20–21.

Purpose: To provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) with respect to the implementation of the U.S. Grain Standards Act.

The agenda includes: (1) GIPSA financial status, (2) Soft Red Winter Wheat Standards, (3) Agency Strategic Plan, (4) Quality Assurance and Control Program Enhancements, (5) Domestic Program Trends and (6) Research Activities.

The meeting will be open to the public. Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact the Administrator, GIPSA, U.S. Department of Agriculture, P.O. Box 96454, Room 1094—South Building, Washington, D.C. 20090–6454, telephone (202) 720–0219 or FAX (202) 205–9237.

Dated: February 21, 1996.

James R. Baker,

Administrator.

[FR Doc. 96–4309 Filed 2–26–96; 8:45 am]

BILLING CODE 3410–EN–M

Natural Resources Conservation Service

Starkweather Watershed Cavalier and Ramsey Counties, North Dakota; Intent to Deauthorize Federal Funding

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Intent to Deauthorize Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR 622), the Natural Resources Conservation Service gives notice of the intent to deauthorize Federal funding for the Starkweather Watershed Project in Ramsey and Cavalier Counties, North Dakota.

FOR FURTHER INFORMATION CONTACT: Scott Hoag, Jr., State Conservationist, Natural Resources Conservation Service, 220 E. Rosser Avenue, P.O. Box 1458, Bismarck, North Dakota, 58502–1458. Phone number: 701–250–4441.

SUPPLEMENTARY INFORMATION: A determination has been made by Scott Hoag, Jr., that the proposed works of improvement for the Starkweather Watershed Project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Scott Hoag, Jr., State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: February 16, 1996.

Ronald D. Sando,

Acting State Conservationist.

[FR Doc. 96–4095 Filed 2–26–96; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 5:00 p.m. on Wednesday, March 13, 1996, at the North Carolina Mutual Insurance Company, 411 West Chapel Hill Street, Durham, North Carolina 27701. The purpose of the meeting is to review a draft report on racial tensions in North Carolina, discuss civil rights progress and/or problems in the State, and plan for the next project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Asa Spaulding, Jr., 919–233–7612 or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

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

Dated at Washington, DC, February 14, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–4376 Filed 2–26–96; 8:45 am]

BILLING CODE 6355–01–P

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 10:00 a.m. to 12:00 p.m. and from 1:30 p.m. to 4:30 p.m. on Thursday, March 14, 1996, at the Quality Inn, Meeting Room, 125 Calhoun Street, (Downtown), Charleston, South Carolina 29401. The purpose of the meeting is to discuss civil rights progress and/or problems in the State; discuss followup to the report, *Perceptions of Racial Tensions in South Carolina*; hold a brief orientation session for the newly appointed committee; and beginning at 1:30 p.m., discuss with top city and county officials racial tensions in the Charleston area.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Milton Kimpson, 803–779–2597, or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

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

Dated at Washington, DC, February 14, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–4377 Filed 2–26–96; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF COMMERCE

[Docket No. 960220034–6034–01]

RIN 0690–XX02

USTTA Foreign Service Policy; Reduction in Force

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is announcing internal regulations governing reduction in force (RIF) procedures for Foreign Service Officers of the United States Travel and Tourism Administration (USTTA). The Under Secretary for Travel and Tourism is responsible for determining the size and composition of the operating Foreign Service workforce. The regulations will apply if, due to lack of work, shortages of funds, insufficient personnel ceiling, or reorganization, the Under Secretary decides a reduction in force is necessary.

DATES: This policy was issued as Department of Commerce Personnel Bulletin 900–1 on February 15, 1996.

FOR FURTHER INFORMATION CONTACT: Gary Jacobs, Office of Human Resources Management, Department of Commerce, Washington, DC 20230, 202–482–4286.

SUPPLEMENTARY INFORMATION: This policy was issued as Department of Commerce Personnel Bulletin 900–1 on February 15, 1996. This notice is given in order to comply with the requirement of section 181 of Public Law 103–236. If the Under Secretary for Travel and Tourism determines circumstances require applying reduction in force procedures to separate a Foreign Service employee due to lack of work, shortage of funds, insufficient personnel ceiling, or reorganization, the following policy will apply.

Elizabeth W. Stroud,

Director for Human, Resources Management.

Personnel Bulletin 900–1

Section 1. Purpose

This sets policy for reduction-in-force in the U.S. Travel and Tourism Administration (USTTA) for members of the Foreign Service holding career or career candidate appointments, as approved by the Director, OPM, on February 13, 1996.

Section 2. Authority

.01 Section 611 of the Foreign Service Act of 1980, as amended,''Reduction in Force'' provides the legal authority for conducting a reduction in force in the Foreign Service.

.02 The Under Secretary for Travel and Tourism is responsible for determining the size and composition of the operating Foreign Service workforce. The Under Secretary is authorized to decide whether circumstances require applying reduction in force (RIF) procedures to separate a Foreign Service employee due to lack of work, shortage of funds, insufficient personnel ceiling, or reorganization. The Under Secretary must determine the number of employees to be separated at each class level.

Section 3. Coverage

.01 These regulations apply to all members of the Foreign Service (SFS and FS) in USTTA holding career or career-candidate appointments under Chapter 3 of the Foreign Service Act of 1980, as amended.

.02 Employees serving on non-career limited appointments are not covered by these regulations. Should the Under Secretary decide that a RIF is necessary, these employees are the first to be separated from the Foreign Service, provided they are in a class that has been selected for reduction.

Section 4. Definitions

.01 Competitive Area

The organizational and geographic boundaries within which FS employees compete for job retention. The competitive area for Foreign Service employees in USTTA is worldwide within USTTA.

.02 Competitive Level

A competitive level is the set of all jobs within a competitive area that are similar enough in duties, qualification requirements, pay schedules and working conditions that the incumbent of one position could successfully perform the critical elements of any other position upon entry into it, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee. Competitive levels in USTTA consist of all Officers in a class.

.03 Reduction in Force (RIF)

A personnel action that releases a Foreign Service employee by separation. This release is due to a lack of work, shortage of funds, insufficient personnel ceiling, or reorganization.

.04 Retention Register

A listing of all employees in each competitive level in the order of their retention standing.

Section 5. RIF Announcement

.01 General RIF Announcement

Management may, at its discretion, issue an advance organization-wide general information notice to alert employees that a reduction in force may be necessary. If issued, this general notice should contain information concerning the reason for the RIF, the scope of the RIF, including the number of employees to be released, the competitive levels from which they are to be released, and the timing of the RIF.

.02 Specific RIF Notice

A specific notice must be sent to individual employees stating that the employee is to be released as a result of a reduction in force action, and explaining how the employee's name was reached. The specific RIF notice is issued by the servicing Human Resources Office at least 60 days before the effective date of the RIF separation. The notice must include information on the employee's right to appeal the RIF to the Foreign Service Grievance Board or to the Merit Systems Protection Board (MSPB), but not to both. In the event of an exigency, the Director for Human Resources Management may approve a shortened specific notice period, but in no case will the shortened period be less than 30 days.

Section 6. Establishing Retention Register/Order of Release

.01 The servicing Human Resources office prepares a retention register for each competitive level, ordering employees within each level based on their tenure of employment, veteran preference, length of service and performance, as follows:

(1) By tenure group I, and tenure group II;

(2) Within each tenure group by veteran preference subgroup, including subgroup AD, subgroup A, and subgroup B; and

(3) Within each subgroup by a combination of points credited for performance and years of service, as described below.

.02 Groups are defined as follows:

(1) Group I includes employees serving on career appointments under section 302 or 305 of the Act.

(2) Group II includes employees serving on career candidate appointments.

.03 Subgroups are defined as follows:

(1) Subgroup AD includes veteran preference eligible employees who have a compensable service-connected disability of 30 percent or more.

(2) Subgroup A consists of preference eligibles not included in subgroup AD. A retired member of the uniformed service is considered a preference eligible only if that person meets the criteria stated in 5 CFR 351.503.

(3) Subgroup B includes all non-preference eligible employees.

.04 Within each subgroup, employees are credited with points for length of service and performance, as follows:

(1) Employees receive one point for each full year of completed Federal Service. The servicing Human

Resources Office will establish a service date for each competing employee in accordance with the procedures in 5 CFR 351.503.

(2) Credit for performance will be based on the results of each of the previous 5 Selection Boards. Points are weighted because competition is more difficult as one moves upward through the ranks of the Foreign Service. Employees receive points for being on a list of those recommended for promotions, whether promoted or not.

- An MC recommended for promotion receives 65 points.
- An OC recommended for promotion receives 55 points.
- A Class One recommended for promotion receives 45 points.
- A Class Two recommended for promotion receives 35 points.
- A Class Three recommended for promotion receives 25 points.
- A Class Four recommended for promotion receives 15 points.
- Those not recommended for promotion and not low-ranked receive 10 points.
- Officers who are low-ranked receive no points.

(5) Points are given also for awards that are recommended by each of the previous 5 Selection Boards.

- A Sustained Superior Performance Award or cash award (SSPA) receives 3 points.
- A Meritorious Step Increase (MSI) receives 5 points.
- Performance Pay (SFS only) receives 5 points.
- Presidential Award (SFS only) receives 10 points.

.05 Employees are rank-ordered within subgroup based on the number of points received. Those with the fewest points go to the bottom of the list and are released first. Those with the most points are at the top of the list and are the last to be released.

.06 FS employees compete for retention only within their competitive level. There is no right to displace employees in another competitive level.

Section 7. Breaking Ties in Retention Standing

.01 The first tie breaker is among those with equal points within a subgroup is to release first anyone who has been low-ranked during the previous 5 years.

.02 If needed, the next tie breaker is use results of Selection Boards, prior to the last 5 Boards being considered, for up to 2 additional years. As soon as the tie is broken, for example in year 6, the officer with the least number of points is be released first.

.03 If after all of the above, there is still a tie, the tie will be broken based on a lottery.

Section 8. Extension of Effective Date of RIF

Management may allow an employee to remain on the rolls for up to a year past the effective date of the RIF for the needs of the service. For example, if serious disruptions would occur in overseas staffing, management could approve a one-year extension of the appointment of an employee reached for release from the competitive level.

Section 9. Transfer of Function

.01 This section is applicable when the work of one or more employees is moved from one competitive area to another as a transfer of function regardless of whether or not the movement is made under authority of a statute, Executive order, reorganization plan, or other authority.

.02 Reduction in force procedures will be used in the losing competitive area to identify the employees to be transferred.

Section 10. Access to Retention Records

All employees covered by these regulations are entitled to review retention registers.

Section 11. Benefits/Placement Assistance

.01 Any employee at Class One or higher, who is separated through RIF, is eligible for an immediate annuity in accordance with Section 806 of the Foreign Service Act of 1980, as amended. Officers below the Class One level are eligible for an immediate annuity if they meet the age and service requirements for voluntary retirement.

.02 Otherwise, they receive severance benefits in accordance with Section 609(b) of the Foreign Service Act of 1980, as amended, as follows:

(1) A payment equal to one-twelfth of a year's salary at his or her current salary rate for each year of service and proportionately for a fraction of a year, but not to exceed a total of one year's salary at the officer's current rate and, (2) a refund of the contributions made by the officer to the Foreign Service Retirement and Disability Fund (FSRD), except that in lieu of a refund an officer who has at least 5 years of service credit toward retirement under the FSRD system may elect to receive an annuity, beginning at age 60. Those enrolled in the Foreign Service Pension System (FSPS), who have completed at least 5 years of creditable service, may elect to receive a deferred annuity at age 62.

.03 An officer cannot receive an immediate annuity and severance benefits.

Section 12. Right to Appeal

.01 An employee has the right to appeal the RIF action to the Merit Systems Protection Board (MSPB) or use the Foreign Service grievance procedure, but not both.

.02 MSPB Appeals.

Appeals to MSPB must be filed during the 30 calendar days beginning with the day after the effective date of the RIF action.

.03 Foreign Service Grievance Board.

Grievances are limited to cases of violation or inappropriate use of RIF authority by the Agency. Such grievances are initiated at the Agency level with the Office of Foreign Service Personnel, and must be submitted within 20 days after the effective date of the Reduction-in-Force. The filing of a grievance does not change the effective date of the action proposed in this notice.

[FR Doc. 96–4373 Filed 2–26–96; 8:45 am]

BILLING CODE 3510–BS–P

Foreign-Trade Zones Board

[Order No. 802]

Expansion of Foreign-Trade Zone 70, Detroit, Michigan, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Greater Detroit Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 70, for authority to expand its general-purpose zone to include jet fuel storage and distribution facilities at the Detroit Metropolitan Wayne County Airport was filed by the Board on May 4, 1995 (FTZ Docket 20–95, 60 FR 25886, 5/15/95); and,

Whereas, notice inviting public comment was given in Federal Register a′nd the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 70 is approved, subject to the Act and the

Board's regulations, including Section 400.28.

Signed at Washington, DC, this 20th day of February 1996.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 96–4417 Filed 2–26–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–122–601]

Brass Sheet and Strip From Canada; Preliminary Results of Antidumping Duty Administrative Review

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

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

SUMMARY: In response to a request from one respondent, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on brass sheet and strip from Canada. The review covers one manufacturer/exporter of the subject merchandise to the United States for the period January 1, 1994 through December 31, 1994.

We have preliminarily determined that U.S. sales have not been made below the normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the NV. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: February 27, 1996.

FOR FURTHER INFORMATION CONTACT: Karen H. Park or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On January 12, 1987, the Department published in the Federal Register (52 FR 1217) the antidumping duty order on brass sheet and strip (BSS) from Canada. On January 12, 1995, the Department published in the Federal Register a notice of ''Opportunity to Request an Administrative Review'' of this antidumping duty order for the period of January 1, 1994 through December 31, 1994 (60 FR 2941). We received a timely request for review from the respondent, Wolverine Tube (Canada), Inc. (Wolverine). On February 15, 1995, the Department initiated a review of Wolverine (60 FR 8629). The period of review (POR) is January 1, 1994 though December 31, 1994.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

Scope of the Review

Imports covered by the review are shipments of BSS, other than leaded and tin BSS. The chemical composition of the covered products is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000. Products whose chemical composition is defined by other C.D.A. or U.N.S. series are not covered by this order.

The physical dimensions of the products covered by this review are BSS of solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coil, wound-on-reels (traverse wound), and cut-to-length products are included. During the review period such merchandise was classifiable under Harmonized Tariff Schedule (HTS) subheadings 7409.21.00 and 7409.29.00. Although the HTS subheadings are provided for convenience and for Customs purposes, the written description of the scope of this order remains dispositive.

Pursuant to the final affirmative determination of circumvention of antidumping duty order, we determined that brass plate used in the production of BSS falls within the scope of the antidumping duty order on BSS from Canada. *See Brass Sheet and Strip from Canada: Final Affirmative Determination of Circumvention of Antidumping Duty Order,* 58 FR 33610 (June 18, 1993).

The review covers one Canadian manufacturer/exporter, Wolverine, and the period January 1, 1994 through December 31, 1994.

United States Price (USP)

In calculating USP for Wolverine, the Department treated respondent's sales as export price (EP), as defined in section 772(a) of the Act, because the subject merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation.

We calculated EP based on packed, delivered, duty-paid prices to unaffiliated customers in the United States. We made deductions from the gross unit price, where appropriate, for inland freight—plant/warehouse to port of exit, brokerage and handling, international freight, and U.S. customs duty, in accordance with section 772(c)(2)(A) of the Act. We added to the gross unit price packing costs for shipment to the United States, where applicable, pursuant to section 772(c)(1)(A) of the Act.

No other adjustments to USP were claimed or allowed.

Cost of Production Analysis

Because the Department disregarded sales below the cost of production (COP) in the last completed review of Wolverine, we have reasonable grounds to believe or suspect that sales below the COP may have occurred during this review. See Section 773(b)(2)(A)(ii) of the Act and *Brass Sheet and Strip from Canada; Final Results of Antidumping Administrative Review,* 60 FR 49582 (September 26, 1995). Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of Wolverine.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative expenses (SG&A) and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment. We relied on the home market sales and COP information provided by Wolverine in its questionnaire responses.

We compared COP to the reported home market prices on a product-specific basis, less any applicable movement charges, and rebates. In accordance with section 773(b)(1) of the Act, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of

Wolverine's home market sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made within an extended period of time in ''substantial quantities.'' Where 20 percent or more of Wolverine's home market sales of a given product were at prices less than the COP, we disregarded the below-cost sales because we determined that the below-cost sales were made within an extended period of time in ''substantial quantities'', in accordance with section 773(b)(2)(B) of the Act, and because we determined that the below-cost home market sales of a given product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

The results of our cost test indicated that within an extended period of time, for certain home market products, more than 20 percent of the home market sales were sold at prices below the COP. In addition, no evidence was presented to indicate that below-cost prices would permit the recovery of all costs within a reasonable period of time. Thus, we excluded these below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Normal Value (NV)

Based on a comparison of the aggregate quantity of home market and U.S. sales, and absent any information that a particular market situation in the exporting country does not permit a proper comparison, we determined that the quantity of foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual transactions to the monthly weighted-average price of sales of the foreign like product. We compared EP sales to sales in the home market of identical merchandise.

We based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the EP, in accordance with section 773(a)(1)(B)(i) of the Act. We made adjustments, where applicable, for expenses incident to placing the foreign like product in condition packed ready for shipment to the place of delivery to the purchaser and home market credit expenses, in accordance with section 773(a)(6)(B)(ii) of the Act. We increased home market price by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act and reduced it by home market packing costs in accordance with section 773(a)(6)(B) of the Act. Prices were reported net of value-added taxes (VAT) and, therefore, no adjustment for VAT was necessary. In accordance with section 773(a)(6)(C) of the Act, we increased NV by adding U.S. credit expense. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/Exporter	Period	Margin (percent)
Wolverine Tube (Canada), Inc	1/01/94–12/31/94	0.00

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will issue the final results of the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing, within 180 days of issuance of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping dumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of BSS from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Wolverine will be the rate established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in these reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews, the cash deposit rate will be 8.10 percent, the ''all others'' rate established in the LTFV investigation (52 FR 1217, January 12, 1987).

This notice serves as a preliminary reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice serves as a preliminary reminder to importers of their responsibility 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 administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: February 22, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–4418 Filed 2–26–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–817]

Notice of Postponement of Preliminary Determination: Antidumping Duty Investigation of Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom

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

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch or Erik Warga, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–3773, or (202) 482–0922, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA)

Postponement of Preliminary Determination

On February 16, 1996, petitioner, Marley Mouldings, made a timely request that the Department of Commerce postpone until Friday, May 3, 1996, its preliminary determination in this investigation. Accordingly, pursuant to section 733(c)(1)(A) of the Act, we have done so.

This notice is published pursuant to section 733(c)(2) of the Act.

Dated: February 20, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations, Import Administration.

[FR Doc. 96–4419 Filed 2–26–96; 8:45 am]

BILLING CODE 3510–DS–P

Florida International University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–100. *Applicant:* Florida International University, Miami, FL 33199. *Instrument:* Electron Microscope, Model CM200. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 58330, November 27, 1995. *Order Date:* December 27, 1994.

Docket Number: 95–102. *Applicant:* State University of New York at Buffalo, Amherst, NY 14260. *Instrument:* Electron Microscope, Model JEM-2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 60 FR 58330, November 27, 1995. *Order Date:* March 17, 1995.

Docket Number: 95–107. *Applicant:* U.S. Department of Commerce, Gaithersburg, MD 20899. *Instrument:* Electron Microscope, Model CM300. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 62390, December 6, 1995. *Order Date:* September 16, 1994.

Docket Number: 95–108. *Applicant:* VA Medical Center of Gainesville, Gainesville, FL 32608-1197. *Instrument:* Electron Microscope, Model CM100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 62390, December 6, 1995. *Order Date:* September 25, 1995.

Docket Number: 95–112. *Applicant:* The Scripps Research Institute, La Jolla, CA 92037. *Instrument:* Electron Microscope, Model CM100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 62390, December 6, 1995. *Order Date:* August 29, 1995.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 96–4420 Filed 2–26–96; 8:45 am]

BILLING CODE 3510–DS–F

Rutgers University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 95–101. *Applicant:* Rutgers University, Piscataway, NJ 08855. *Instrument:* Chlorophyll Fluorescence Measuring System, Model PAM 101. *Manufacturer:* Walz (Mess- und Regeltechnik), Germany. *Intended Use:* See notice at 60 FR 57222, November 14, 1995. *Reasons:* The foreign instrument provides: (1) fluorescence rate measurements under sunlight conditions, (2) flash trigger control variable between 100 msec and 10 000 sec, and (3) high kinetic resolution at 100 Hz. *Advice Received From:* National Institutes of Health, January 29, 1996.

Docket Number: 95–103. *Applicant:* University of Virginia, Charlottesville, VA 22906. *Instrument:* SIR Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 60 FR 58330, November 27, 1995. *Reasons:* The foreign instrument provides continuous flow gas chromatography-combustion and an internal precision of 0.01 per mil for 5 bar µl of $C0_2$. *Advice Received From:* National Institutes of Health, January 30, 1996.

Docket Number: 95–106. *Applicant:* Pennsylvania State University, University Park, PA 16802. *Instrument:* Cold Stage for Time-of-Flight SIMS. *Manufacturer:* Kore Technology, Ltd., United Kingdom. *Intended Use:* See notice at 60 FR 62390, December 6, 1995. *Reasons:* The foreign instrument provides vibrational stability to allow imaging with spatial resolution to 20 nm and a demountable sample holder. *Advice Received From:* National Institutes of Health, January 30, 1996.

Docket Number: 95–110. *Applicant:* National Institutes of Standards and Technology, Gaithersburg, MD 20899. *Instrument:* Mass Spectrometer, Model

JMS-700. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 60 FR 62390, December 6, 1995. *Reasons:* The foreign instrument provides high precision measurements of the ratios of intensities of two or more ions from compounds eluting from capillary gas chromatography columns and double-focusing magnetic sector geometry with resolution to 60 000. *Advice Received From:* National Institutes of Health, January 30, 1996.

Docket Number: 95–111. *Applicant:* University of Wisconsin-Madison, Madison, WI 53706. *Instrument:* Mode-locked Solid State Laser. *Manufacturer:* Microlase Optical Systems, Ltd., United Kingdom. *Intended Use:* See notice at 60 FR 62390, December 6, 1996. *Reasons:* The foreign instrument provides: (1) a resonator with passive mode-locking capability, (2) short pulse duration < 300 femtoseconds, and (3) frequency doubling to 660 nanometers. *Advice Received From:* National Institutes of Health, January 31, 1996.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 96–4421 Filed 2–26–96; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[I.D. 021596C]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The meetings will be held March 11–15, 1996.

ADDRESSES: The meetings will be held at the Red Lion Hotel - Columbia River, 1401 North Hayden Island Drive, Portland, OR 97217; telephone: (503) 283–2111.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The Council meeting will begin on March 12, at 8:00 a.m. in a closed session (not open to the public) to discuss litigation. The open session begins at 8:30 a.m. The Council meeting will reconvene at 8:00 a.m. each day, March 13 through March 15. The meetings may continue each day into the evening hours, if necessary, to complete business.

The following items are on the Council agenda:

A. Call to Order

B. Salmon Management

1. Review of 1995 Fisheries and Summary of 1996 Stock Abundance Estimates;

2. Preliminary Definition of 1996 Management Options;

3. Status of Reviews to Determine Causes of Stock Declines for Several Puget Sound Chinook Stocks, Strait of Juan de Fuca Coho, and Quillayute Chinook;

4. Adoption of 1996 Management Options for Salmon Technical Team Analysis;

5. Schedule of Hearings and Appointment of Hearing Officers; and

6. Adoption of 1996 Management Options for Public Review.

C. Groundfish Management

1. Status of Federal Regulations;

2. Pacific Whiting Acceptable Biological Catch/Harvest Guideline for 1996;

3. Pacific Whiting Allocation and Management After 1996;

4. Status of Plan Amendments to Allow Landing of Salmon in the Pacific Whiting Fishery; and

5. Status of Analysis of Long Term Fixed Gear Sablefish Management Alternatives.

D. Administrative and Other Matters

1. Report of the Budget Committee;

2. Status of Legislation;

3. Report to Congress on Impacts of Seals and Sea Lions on West Coast Marine Ecosystems;

4. Appointments;

5. Revisions to Council Operation Procedures;

6. Report of the Coast Guard Pacific Regional Fishery Training Team; and

7. Adopt April 1996 Agenda.

E. Habitat Issues

1. Report of the Habitat Steering Group;

2. Public Comments; and

3. Council.

F. Pacific Halibut Management

1. Status of Implementation of Council Recommendations for 1996 Fisheries;

2. Results of International Pacific Halibut Commission Annual Meeting; and

3. Incidental Catch in the Troll Salmon Fishery.

Other Meetings

The Salmon Technical Team will meet on March 11–15, as necessary, to address salmon management issues related to Council agenda items.

The Salmon Advisory Subpanel will convene on March 11 at 9:00 a.m., and March 12–15 at 8:00 a.m., to address salmon management items on the Council agenda.

The Habitat Steering Group will convene on March 11 at 10:00 a.m., to consider activities affecting the habitat of fish stocks managed by the Council.

The Scientific and Statistical Committee will convene on March 11 at 11:00 a.m., and March 12 at 8:00 a.m., to address scientific issues related to Council agenda items.

The Budget Committee will convene on March 11 at 2:00 p.m., to review the fiscal year 1996 budget situation.

The Puget Sound Stock Review Committee will convene on March 14 at 3:00 p.m., to continue their review of chinook and coho salmon stocks under the Council's overfishing definition.

The Enforcement Consultants meet on March 12 and March 14 at 7:00 p.m., to address enforcement issues related to Council agenda items.

Detailed agendas for the above advisory meetings will be available after March 1, 1996.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: February 21, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–4335 Filed 2–26–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022096B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for a scientific research permit (P504G) and modifications to two scientific research permits (P770#66 and P770#68).

SUMMARY: Notice is hereby given that the U.S. Army Corps of Engineers at Walla Walla, WA (Corps) has applied in due form for a permit and the Coastal Zone and Estuarine Studies Division, NMFS in Seattle, WA (CZESD) has applied in due form for modifications to permits to take endangered and threatened species for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on any of these applications must be received on or before March 28, 1996.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: The Corps requests a permit and CZESD requests modifications to permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The Corps (P504G) requests a 5-year permit to directly take juvenile, threatened, Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*) and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) and to incidentally take adult, threatened, Snake River spring/summer and fall chinook salmon associated with a study designed to monitor the operation of the new juvenile fish bypass system at Ice Harbor Dam on the Snake River in Washington. Run-of-the-river juvenile fish, a proportion of which will be ESA-listed fish, are proposed to be sampled from the bypass system, anesthetized, handled, allowed to recover from the anesthetic, and released. The primary purpose of sampling will be to ascertain fish condition and thereby certify that the bypass system is functioning correctly. Some adult fish, including listed adult salmon, are expected to fall back through the juvenile bypass system and are proposed to be incidentally captured and handled to return them to the river.

CZESD (P770#66) requests modification 3 to permit 900 to allow their annual take of listed juvenile fish authorized for Study 1, Survival Estimates for the Passage of Juvenile Salmonids through Dams and Reservoirs, to be supplemented with juvenile, listed, Snake River spring/summer chinook salmon captured indirectly by the National Biological Service (NBS), in association with a fall chinook salmon study, under the authority of permit 817. Permit 900 authorizes CZESD to directly take juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon and incidentally take juvenile, threatened, Snake River fall chinook salmon and juvenile, endangered, Snake River sockeye salmon for Study 1. In addition, CZESD would like to add the free-flowing Snake River, upstream of Lower Granite Reservoir, as a primary release location for the listed juvenile fish authorized to be captured and handled for Study 1. CZESD also requests a take of listed species associated with an additional project under Study 1 designed to evaluate the new surface collector at Lower Granite Dam on the Snake River in Washington. Modification 3 would be valid for the duration of Study 1 of the permit. Study 1 of permit 900 expires on December 31, 1998.

CZESD (P770#68) requests modification 2 to permit 946 to adjust for changes in the anticipated 1996 take associated with Study 2, Estuarine Recovery of Passive Integrated Transponder-tagged Juvenile Salmonids from the Lower Granite Dam Transportation Study. Permit 946 authorizes CZESD to take juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon and juvenile, endangered, Snake River sockeye salmon for Study 2. For the modification, CZESD requests an increase in the take of juvenile, endangered, Snake River sockeye salmon. Modification 2 would be valid for the duration of Study 2 of the permit. Study 2 of permit 946 expires on December 31, 1999.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on any of these applications would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: February 20, 1996.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–4336 Filed 2–26–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Guidance on the Application of Best Management Practices to Mechanical Silvicultural Site Preparation Activities for the Establishment of Pine Plantations in the Southeast

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) issued a Memorandum to the Field dated November 28, 1995, on the application of best management practices to mechanical silvicultural site preparation activities for the establishment of pine plantations in the Southeast. The purpose of the guidance is to clarify those circumstances where mechanical silvicultural site preparation activities conducted in accordance with best management practices will not require a Clean Water Act Section 404 permit. Discussions with representatives of the forest industry, environmental organizations and State agencies provided key input during guidance development. The clarification of this site preparation issue relies in large part on State expertise in the development and implementation of best management practices associated with Forestry activities in wetlands. The guidance also discusses EPA and Corps support of follow-up efforts by the States and private interests to promote effective best management practices and protect wetland resources in Southeastern States.

FOR FURTHER INFORMATION CONTACT: Details are available from EPA and Corps field staff listed at the end of the memorandum, or Mr. John Goodin (EPA) at (202) 260–9910 or Mr. Victor Cole (Corps) at (202) 761–0201.

SUPPLEMENTARY INFORMATION: The following is the subject guidance

previously provided to the EPA and Corps field offices.

Daniel R. Burns,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Memorandum to the Field—Corps and EPA Regulatory Program Chiefs

Subject: Application of Best Management Practices to Mechanical Silvicultural Site Preparation Activities for the Establishment of Pine Plantations in the Southeast.

Date: November 28, 1995.

This memorandum [1] clarifies the applicability of forested wetlands best management practices to mechanical silvicultural site preparation activities for the establishment of pine plantations in the Southeast. Mechanical silvicultural site preparation activities [2] conducted in accordance with the best management practices discussed below, which are designed to minimize impacts to the aquatic ecosystem, will not require a Clean Water Act Section 404 permit. These best management practices further recognize that certain wetlands should not be subject to unpermitted mechanical silvicultural site preparation activities because of the adverse nature of potential impacts associated with these activities on these sites.

This memorandum recognizes State expertise that is reflected in the development and implementation of regionally specific best management practices (BMPs) associated with forestry activities in wetlands. Such BMPs encourage sound silvicultural operations while providing protection of certain wetlands functions and values. The U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) believe that it is appropriate to apply the Clean Water Act Section 404 program in a manner that builds from, and is consistent with, this State experience. The Agencies will support and assist State efforts to build upon these BMPs at the State level, to ensure that mechanical silvicultural site preparation is conducted in a manner that best reflects the specific wetlands resource protection and management goals of each State.

Introduction

Forested wetlands exhibit a wide variety of water regimes, soils, and vegetation types that in turn provide a myriad of functions and values. The States in the Southeast contain forested wetlands systems that in many cases are also subject to ongoing timber operations. In developing silvicultural BMPs, States have identified those specific forestry practices that will protect water quality. This guidance was developed to respond to questions regarding the applicability of Section 404 to mechanical silvicultural site preparation activities. EPA and the Corps relied extensively on existing State knowledge to protect aquatic ecosystems with BMPs, including the types of wetlands, types of activities, and BMPs described below.

This memorandum reflects information gathered from the southeastern United States, where mechanical silvicultural site preparation activities are associated with the establishment of pine plantations in wetlands.[3] As such, this memorandum, and particularly the descriptions of wetlands, activities, and BMPs, necessarily focus on this area of the country. However, the guidance presented is generally applicable when addressing mechanical silvicultural site preparation activities in wetlands elsewhere in the country.

Circumstances Where Mechanical Silvicultural Site Preparation Activities Requires a Permit

The States, in coordination with the forestry community and the public, have recognized that mechanical silvicultural site preparation activities may have measurable and significant impacts on aquatic ecosystems when conducted in wetlands that are permanently flooded, intermittently exposed, and semi-permanently flooded, and in certain additional wetland communities that exhibit aquatic functions and values that are more susceptible to impacts from these activities. For the wetland types identified in this section, it is most effective to evaluate proposals for site preparation and potential associated environmental effects on a case-by-case basis as part of the individual permit process. Therefore, mechanical silvicultural site preparation activities in the areas listed below require a permit.[4]

A permit will be required in the following areas unless they have been so altered through past practices (including the installation and continuous maintenance of water management structures) as to no longer exhibit the distinguishing characteristics described below (see ''Circumstances Where Mechanical Silvicultural Site Preparation Activities Do Not Require a Permit'' below). Of course, discharges incidental to activities in any wetlands that convert waters of the United States to non-waters always require authorization under Clean Water Act Section 404.

(1) Permanently flooded, intermittently exposed, and semi-permanently flooded wetlands. The hydrology of permanently flooded wetland systems is characterized by water that covers the land surface throughout the year in all years. The hydrology of intermittently exposed wetlands is characterized by surface water that is present throughout the year except in years of extreme drought. The hydrology of semi-permanently flooded wetlands is characterized by surface water that persists throughout the growing season in most years and, when it is absent, the water table is usually at or very near the land surface.[5] Examples typical of these wetlands include Cypress-Gum Swamps, Muck and Peat Swamps, and Cypress Strands/Domes.

(2) Riverine Bottomland Hardwood wetlands: seasonally flooded (or wetter) bottomland hardwood wetlands within the first or second bottoms of the floodplains of river systems. Site-specific characteristics of hydrology, soils, vegetation, and the presence of alluvial features elaborated in paragraphs a, b, and c below will be determinative of the boundary of riverine bottomland hardwood wetlands. National Wetlands Inventory maps can provide a useful reference for the general location of these wetlands on the landscape.

(a) the hydrologic characteristics included in this definition refer to seasonally flooded or wetter river floodplain sites where overbank flooding has resulted in alluvial features such as well-defined floodplains, bottoms/terraces, natural levees, and

[1] This guidance is written to provide interpretation and clarification of existing EPA and Corps regulations and does not change any substantive requirements of these regulations. This memorandum is further intended to provide clarification regarding the exercise of discretion under current agency regulations.

[2] Mechanical silvicultural site preparation activities include shearing, raking, ripping, chopping, windrowing, piling, and other similar physical methods used to cut, break apart, or move logging debris following harvest for the establishment of pine plantations.

[3] Information was considered from the following States in the Southeast: Virginia, North Carolina, South Carolina, Georgia, Florida, Tennessee, Alabama, Mississippi, Louisiana, and Arkansas.

[4] The community descriptions draw extensively from: Schafale, M.P., and A.S. Weakley, 1990. Classification of the Natural Communities of North Carolina. North Carolina Natural Heritage Program, Raleigh, NC. 325pp.

[5] Cowardin, L.M., et al. 1979. Classification of wetlands and deepwater habitats of the United States. U.S. Fish and Wildlife Service, Washington, DC. 131pp.

backswamps. For the purposes of this guidance definition, ''seasonally flooded'' bottomland hardwood wetlands are characterized by surface water that is present for extended periods, especially early in the growing season [6] (usually greater than 14 consecutive days), but is absent by the end of the season in most years. When surface water is absent, the water table is often near the land surface. Field indicators of the presence of surface water include water-stained leaves, drift lines, and water marks on trees.

(b) the vegetative characteristics included in this definition refer to forested wetlands where hardwoods dominate the canopy. For the purposes of this guidance definition, riverine bottomland hardwoods do not include sites in which greater than 25% of the canopy is pine.

(c) The soil characteristics included in this definition refer to listed hydric soils that are poorly drained or very poorly drained. For the purposes of this guidance definition, riverine bottomland hardwoods do not include sites with hydric soils that are somewhat poorly drained or that, at a particular site, do not demonstrate chroma, concretions, and other field characteristics verifying it as a hydric soil.

(3) White Cedar Swamps: wetlands, greater than one acre in headwaters and greater than five acres elsewhere, underlain by peat of greater than one meter, and vegetated by natural white cedar representing more than 50% of the basal area, where the total basal area for all tree species is 60 square feet or greater.

(4) Carolina Bay wetlands: oriented, elliptical depressions with a sand rim, either (a) underlain by clay-based soils and vegetated by cypress; or, (b) underlain by peat of greater than one-half meter and typically vegetated with an overstory of Red, Sweet, and Loblolly Bays.

(5) Non-riverine Forest Wetlands: wetlands in this group are rare, high quality wet forests, with mature vegetation, located on the Southeastern coastal plain, whose hydrology is dominated by high water tables. Two forest community types fall into this group: [7]

(a) Non-riverine Wet Hardwood Forests—poorly drained mineral soil interstream flats (comprising 10 or more contiguous acres), typically on the margins of large peatland areas, seasonally flooded or saturated by high water tables, with vegetation dominated (greater than 50% of basal area per acre) by swamp chestnut oak, cherrybark oak, or laurel oak alone or in combination.

(b) Non-riverine Swamp Forests—very poorly drained flats (comprising 5 or more contiguous acres), with organic soils or mineral soils with high organic content, seasonally to frequently flooded or saturated by high water tables, with vegetation dominated by bald cypress, pond cypress, swamp tupelo, water tupelo, or Atlantic white cedar alone or in combination.

The term ''high quality'' used in this characterization refers to generally undisturbed forest stands, whose character is not significantly affected by human activities (e.g., forest management). Non-riverine Forest wetlands dominated by red maple, sweetgum, or loblolly pine alone or in combination are not considered to be of high quality, and therefore do not require a permit.

(6) Low Pocosin wetlands: central, deepest parts of domed peatlands on poorly drained interstream flats, underlain by peat soils greater than one meter, typically vegetated by a dense layer of short shrubs.

(7) Wet Marl Forests: hardwood forest wetlands underlain with poorly drained marl-derived, high pH soils.

(8) Tidal Freshwater Marshes: wetlands regularly or irregularly flooded by freshwater with dense herbaceous vegetation, on the margins of estuaries or drowned rivers or creeks.

(9) Maritime Grasslands, Shrub Swamps, and Swamp Forests: barrier island wetlands in dune swales and flats, underlain by wet mucky or sandy soils, vegetated by wetland herbs, shrubs, and trees.

Circumstances Where Mechanical Silvicultural Site Preparation Activities Do Not Require a Permit

Mechanical silvicultural site preparation activities in wetlands that are seasonally flooded, intermittently flooded, temporarily flooded, or saturated, or in existing pine plantations and other silvicultural sites (except as listed above), minimize impacts to the aquatic ecosystem and do not require a permit if conducted according to the BMPs listed below. Of course, silvicultural practices conducted in uplands never require a Clean Water Act Section 404 permit.

The hydrology of seasonally flooded wetlands is characterized by surface water that is present for extended periods, especially early in the growing season, but is absent by the end of the season in most years (when surface water is absent, the water table is often near the surface). The hydrology of intermittently flooded wetland systems is characterized by substrate that is usually exposed, but where surface water is present for variable periods without detectable seasonable periodicity. The hydrology of temporarily flooded wetlands is characterized by surface water that is present for brief periods during the growing season, but also by a water table that usually lies well below the soil surface for most of the season. The hydrology of saturated wetlands is characterized by substrate that is saturated to the surface for extended periods during the growing season, but also by surface water that is seldom present.[8] Examples typical of these wetlands include Pine Flatwoods, Pond Pine Woodlands, and Wet Flats (e.g., certain pine/hardwood forests).

Best Management Practices

Every State in the Southeast has developed BMPs for forestry to protect water quality and all but two have also developed specific BMPs for forested wetlands. These BMPs have been developed because silvicultural practices have the potential to result in impacts to the aquatic ecosystem. Mechanical silvicultural site preparation activities include shearing, raking, ripping, chopping, windrowing, piling, and other similar physical methods used to cut, break apart, or move logging debris following harvest. Impacts such as soil compaction, turbidity, erosion, and hydrologic modifications can result if not effectively controlled by BMPs. States have developed BMPs that address not only types of wetlands and types of activities, but also detail specific measures to protect water quality through establishing special management zones, practices for stream crossings, and practices for forest road construction.

In developing forested wetlands BMPs, States in the Southeast have recognized that certain silvicultural site preparation techniques are more effective when conducted in areas that have drier water regimes. The BMPs stated below represent a composite of State expertise to protect water quality from silvicultural impacts. These BMPs also address the location, as well as the nature, of activities. The Corps and EPA believe that these forested wetlands BMPs are effective in protecting water quality and therefore are adopting them

[6] Consistent with the 1987 Corps of Engineers Wetlands Delineation Manual, growing season starting and ending dates are determined by the 28 degrees F or lower temperature threshold.

[7] These forest types are a subset of those described in Schafale and Weakley, 1990.

[8] Cowardin et al., 1979.

to protect these functions and values considered under Section 404.

The following forested wetlands BMPs are designed to minimize the impacts associated with mechanical silvicultural site preparation activities in circumstances where these activities do not require a permit (authorization from the Corps is necessary for discharges associated with silvicultural site preparation in wetlands described above as requiring a permit [9]). The BMPs include, at a minimum, the following:

(1) position shear blades or rakes at or near the soil surface and windrow, pile, and otherwise move logs and logging debris by methods that minimize dragging or pushing through the soil to minimize soil disturbance associated with shearing, raking, and moving trees, stumps, brush, and other unwanted vegetation;

(2) conduct activities in such a manner as to avoid excessive soil compaction and maintain soil tilth;

(3) arrange windrows in such a manner as to limit erosion, overland flow, and runoff;

(4) prevent disposal or storage of logs or logging debris in streamside management zones—defined areas adjacent to streams, lakes, and other waterbodies—to protect water quality;

(5) maintain the natural contour of the site and ensure that activities do not immediately or gradually convert the wetland to a non-wetland; and

(6) conduct activities with appropriate water management mechanisms to minimize off-site water quality impacts.

Implementation

EPA and the Corps will continue to work closely with State forestry agencies to promote the implementation of consistent and effective BMPs that facilitate sound silvicultural practices. In those States where no BMPs specific to mechanical silvicultural site preparation activities in forested wetlands are currently in place, EPA and the Corps will coordinate with those States to develop BMPs. In the interim, mechanical silvicultural site preparation activities conducted in accordance with this guidance will not require a Section 404 permit.

In order to ensure consistency in the application of this guidance over time, changes to the vegetation of forested wetlands associated with human activities conducted after the issuance of this guidance will not alter its applicability. For example, this guidance is not intended to establish the requirement for a permit for mechanical silvicultural site preparation where tree harvesting results in the establishment of site characteristics for which a permit would otherwise be required (e.g., where the selective cutting of naturally occurring pine in a Riverine Bottomland Hardwood wetland site with originally greater than 25% pine in the canopy results in a site ''where hardwoods dominate the canopy''). In a similar manner, while harvesting of timber consistent with the requirements of Section 404(f) is exempt from regulation and natural changes (e.g., wildfire, succession) may change site characteristics, human manipulation of the vegetative characteristics of a site does not alter its status for the purposes of this guidance (e.g., removal of all the Atlantic White Cedar in an Atlantic White Cedar Swamp does not eliminate the need for a permit for mechanical silvicultural site preparation if the area would have required a permit before the removal of the trees).

Finally, the Agencies will encourage efforts at the State level to identify additional wetlands which may be of special concern and could be incorporated into State BMPs and cooperative programs, initiatives, and partnerships to protect these wetlands. To facilitate this effort, stakeholders are encouraged to develop a process after the issuance of this guidance to identify and protect unique and rare wetland sites on lands of the participating stakeholders. EPA and the Corps will monitor the application of this guidance, progress with conserving special wetland sites through cooperative programs and initiatives, and consider any new information, such as advances in silvicultural practices, improvements to State BMPs, or data relevant to potential impacts to wetlands, to determine whether the list of wetlands subject to the permit requirement should be modified or other revisions to this guidance are appropriate.

Further Information

The Corps and EPA will work closely with the States, forestry community, and public to answer any questions that may arise with regard to this guidance. For further information on this memorandum, please contact Mr. John Goodin of EPA's Wetlands Division at (202) 260–9910 or Mr. Sam Collinson of the Corps of Engineer's Regulatory Branch at (202) 761–0199. The public may also contact:

EPA Region IV: Tom Welborn (404) 347–3871 ext. 6507
EPA Region VI: Bill Cox (214) 665–6680
EPA Region III: Barbara D'Angelo (215) 597–9301
Corps Wilmington District: Wayne Wright (910) 251–4630
Corps Charleston District: Bob Riggs (803) 727–4330
Corps Savannah District: Nick Ogden (912) 652–5768
Corps Jacksonville District: John Hall (904) 232–1666
Corps Norfolk District: Woody Poore (804) 441–7068
Corps Mobile District: Ron Krizman (334) 690–2658
Corps Little Rock District: Louie Cockman (501) 324–5296
Corps Memphis District: Larry Watson (901) 544–3471
Corps Nashville District: Randy Castleman (615) 736–5181
Corps New Orleans District: Ron Ventola (504) 862–2255
Corps Vicksburg District: Beth Guynes (601) 631–5276

Robert H. Wayland, III,

Director, Office of Wetlands, Oceans, and Watersheds, Environmental Protection Agency.

Michael L. Davis,

Chief, Regulatory Branch, U.S. Army Corps of Engineers

[FR Doc. 96–4345 Filed 2–26–96; 8:45 am]

BILLING CODE 3710–92–M

[9] Contact the nearest Corps District listed at the end of this document for further information.

DEPARTMENT OF EDUCATION

[CFDA No.: 84.162A]

Emergency Immigrant Education Program

Notice inviting applications for new awards for fiscal year (FY) 1996.

Purpose of Program: This program provides grants to State educational agencies (SEAs) to assist local educational agencies (LEAs) that experience large increases in their student population due to immigration. These grants are to be used to provide high-quality instruction to immigrant children and youth and to help those children and youth make the transition into American society and meet the same challenging State performance standards expected of all children and youth.

Eligible Applicants: State educational agencies.

Deadline for Transmittal of Applications: May 15, 1996.

Deadline for Intergovernmental Review: July 15, 1996.

Applications Available: February 28, 1996.

Available Funds: $37.5 million.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 16 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76, 77, 79, 80, 81, 82, and 85.

Programmatic Information: An SEA is eligible for a grant if it meets the eligibility requirements specified in sections 7304 and 7305 of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the Improving America's School's Act of 1994 (Pub. L. 103–382, enacted October 20, 1994). 20 U.S.C. 7544 and 7545. In order to receive an award under this program, an SEA must provide a count, taken during April 1996, of the number of immigrant children and youth enrolled in public and nonpublic schools in eligible LEAs in accordance with the requirements specified in section 7304 of the Act. Id. An eligible LEA is one in which the number of immigrant children and youth enrolled in the public and nonpublic elementary and secondary schools within the district is at least either 500 or 3 percent of the total number of students enrolled in those public and nonpublic schools. 20 U.S.C. 7544(b)(2). Under section 7501(7) of the Act, the term ''immigrant children and youth'' means individuals who are aged 3 through 21, were not born in any State, and have not been attending one or more schools in any one or more States for more than 3 full academic years. 20 U.S.C. 7601(7).

For Applications or Information Contact: Ms. Harpreet K. Sandhu, U.S. Department of Education, 600 Independence Avenue, S.W., Room 5086, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–9808. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including a copy of the application notice for this grant program, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at http://www.ed.gov/money.html. However, the official application notice for this grant program is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 7541–7549.

Dated: February 22, 1996.

Delia Pompa,

Director, Office of Bilingual Education and Minority Language Affairs.

[FR Doc. 96–4410 Filed 2–26–96; 8:45 am]

BILLING CODE 4000–01–P

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Amendment to notice of a partially closed meeting.

SUMMARY: This amends the notice of a partially closed meeting of the National Assessment Governing Board published in Vol. 61, No. 29, Page 5389.

TIME: March 1, 1996, 7:30–8:30 a.m., Nominations Committee, (closed); March 2, 1996, 11:30 a.m.–12:00 noon, Full Board, (closed).

LOCATION: Ritz-Carlton Hotel—Pentagon City, 1250 South Hayes Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street NW., Washington, DC 20002–4233.

SUPPLEMENTARY INFORMATION: On March 1, the Nominations Committee will meet in closed session from 7:30–8:30 a.m. This meeting must be closed because the committee will be considering qualifications of nominees for appointment to Board membership.

On March 2, the National Assessment Governing Board will meet in partially closed session from 11:30 a.m. to 12:00 noon to hear the report of the Nominations Committee. This portion of the meeting must be closed to permit the Board to review and discuss personal qualifications and experiences of nominees recommended to serve in respective categories of Board membership.

In both instances, discussion of such information will touch upon matters that would disclose information of a personal nature where disclosures would constitute a clearly unwarranted invasion of personal privacy, and as such, is protected by exemption (6) of Section 552b(c) of Title 5 U.S.C.

A summary of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of Section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street NW., Washington, DC, from 8:30 a.m. to 5:00 p.m.

Dated: February 22, 1996.

Roy Truby,

Executive Director.

[FR Doc. 96–4393 Filed 2–26–96; 8:45 am]

BILLING CODE 4000–01–M

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming partially closed meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: March 20, 1996, beginning at 8:30 a.m. and ending at 5 p.m.; and March 21, 1996, beginning at 8 a.m. and ending at approximately 2 p.m., but closed to the public from 8 a.m. to 9:30 a.m.

ADDRESSES: Washington Hilton and Towers, the Thoroughbred Room, 1919 Connecticut Avenue NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue SW., Suite 601, Washington, DC 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program, and assisting with activities related to reauthorization of the Higher Education Act of 1965. As a result of the passage of the Higher

Education Amendments of 1992, the Congress directed the Advisory Committee to assist with a series of special assessments and conduct an in-depth study of student loan simplification. The Advisory Committee fulfills its charge by conducting objective, nonpartisan, and independent analyses of important student aid issues. As a result of passage of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Congress assigned the Advisory Committee the major task of evaluating the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP). The Committee will report to the Secretary and Congress on not less than an annual basis on the operation of both programs and submit a final report by January 1, 1997.

The proposed agenda includes (a) a discussion session on reauthorization; (b) an update on the delivery system; (c) an update on the progress of the loan programs; (d) an Advisory Committee regulatory update; and (e) a planning session on the Committee's agenda for the remainder of fiscal year 1996 and other Committee business (e.g., election of officers, budget report, etc.). Space is limited and you are encouraged to register early if you plan to attend. To register, please fax your name, title, affiliation, complete address (including Internet and E-Mail—if available), telephone number, and fax number to the Advisory Committee staff office at (202) 401–3467. If you are unable to fax, please mail your registration information or contact the Advisory Committee staff office at (202) 708–7439. Also, you may register through INTERNET at *ADV—COMSFA@ED.gov or Tracy—Deanna—Jones@ED.gov*. The registration deadline is Friday, March 15, 1996.

The Advisory Committee will meet in Washington, DC on March 20, 1996, from 8:30 a.m. to 5 p.m., and on March 21 from 8 a.m. to 2 p.m. The meeting will be closed to the public on March 21, from 8 a.m. to 9:30 a.m. to discuss personnel matters. The ensuing discussions will relate to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552(b)(c) of Title 5 U.S.C.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552(b) will be available to the public within fourteen days after the meeting.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue SW., Suite 601, Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: February 21, 1996.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 96–4398 Filed 2–26–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–136–001]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 21, 1996.

Take notice that on February 15, 1996, Algonquin Gas Transmission Company (Algonquin), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet, with a proposed effective date of March 1, 1996.

Fourth Revised Sheet No. 688

Algonquin states that the purpose of this filing is to correct a pagination error which occurred in its filing of February 1, 1996 in Docket No. RP96–136–000.

Algonquin states that copies of this filing were mailed to all firm customers of Algonquin 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 18 CFR Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–4328 Filed 2–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–110–000]

Carnegie Interstate Pipeline Company; Notice of Technical Conference

February 21, 1996.

Pursuant to the Commission's letter order issued on January 31, 1996, in the above-captioned proceeding, a technical conference will be convened to review Carnegie Interstate Pipeline Company's (Carnegie) release of its unassigned Texas Eastern Transmission Corporation (Texas Eastern) capacity. The conference will be limited to the data filed in this proceeding, including Carnegie's posting of stranded capacity on Texas Eastern's electronic bulletin board. The conference will be held on Tuesday March 5, 1996, at 10:00 a.m., in a Hearing Room to be designated on the second floor at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend. For additional information, please contact Bob Sheldon at (202) 208–2273.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4326 Filed 2–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–110–001]

Carnegie Interstate Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

February 21, 1996.

Take notice that on February 15, 1996, Carnegie Interstate Pipeline Company (CIPCO) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, to become effective on February 1, 1996:

Sixth Revised Sheet No. 7

CIPCO states that this is a revised quarterly Transportation Cost Rate (TCR) filing, submitted in compliance with the Commission's January 31, 1996 letter order in this proceeding. CIPCO revised its TCR to reflect new projections of revenue associated with release of its capacity on Texas Eastern Transmission Corporation for the 3-month period February 1, 1996 to April 30, 1996. The filing proposes a TCR of $0.8283, compared to the TCR of $1.2286 proposed in CIPCO's previous filing in this proceeding.

CIPCO states that copies of its filing were served on all jurisdictional 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, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–4327 Filed 2–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–408–006]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

February 21, 1996.

Take notice that on February 15, 1996, Columbia Gas Transmission Corporation (Columbia) filed to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of May 1, 1996:

Substitute Twelfth Revised Sheet No. 25
Substitute Twelfth Revised Sheet No. 26
Substitute Twelfth Revised Sheet No. 27
Sub Thirteenth Revised Sheet No. 28

Columbia states that the purpose of this filing is to comply with Ordering Paragraph B of the Commission's January 31, 1996 order (74 FERC ¶ 61,067) in Docket No. RP95–408–004 and RP95–408–005 which directed Columbia to recalculate and refile its Stranded Facilities Charge (SFC) effective May 1, 1996, by eliminating the component for income taxes (approximately $2.1 million). Columbia states that consistent with the discussion in the January 31, 1996 order it reserves the right to move the May 1, 1996 level tariff sheets into effect as of that date or at any time thereafter.

Columbia states that copies of its filing have been mailed to all parties listed on the Commission's service list for this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 96–4325 Filed 2–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–47–000]

NorAm Gas Transmission Company; Notice of Refund Report

February 21, 1996.

Take notice that on February 1, 1996, NorAm Gas Transmission Company (NorAm) tendered for filing a Report of Gas Research Institute (GRI) Tier 1 Refunds. NorAm states that the refund report is filed in accordance with the Commission's directive contained in Opinion No. 402 [73 FERC ¶ 61,073 (1995)].

NorAm further states that the refunds, totalling $64,120.00, were made from December 5 to 20, 1995. The report reflects the amounts allocated to each firm transportation customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 28, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4322 Filed 2–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–143–000]

Williams Natural Gas Company; Notice of GRI Reservation Surcharges

February 21, 1996.

Take notice that on February 14, 1996, Williams Natural Gas Company (WNG), tendered for filing a schedule of refunds to be made to customers due to incorrectly collected GRI reservation surcharges.

WNG states that as a result of inquiries by certain customers and the Commission's May 3, 1995 Order Granting Clarification, WNG has determined that it incorrectly calculated the GRI reservation surcharge on capacity released by the original customer holding such capacity (releasing shipper) at less than maximum rate for the period January 1, 1994 through September 30, 1995. WNG states that the instant filing contains a schedule of refunds to be made to customers due to incorrectly collected GRI reservation surcharges, to be refunded upon Commission approval.

WNG states that a copy of its filing was served on all customers who are entitled to refunds, interested state commissions, and GRI.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 28, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4329 Filed 2–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11408–000]

Niagara Mohawk Power Corporation, New York; Notice of Availability of Final Environmental Assessment

February 21, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the existing Salmon River Hydroelectric Project located on the Salmon River in Oswego County, near the Village of Altmar, New York, and has prepared a final Environmental Assessment (EA) for the project.

Copies of the final EA are available for review in the Public Reference Branch,

Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

For further information, please contact Robert Bell, Project Manager, at (202) 219–2806.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4324 Filed 2–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Projects Nos. 2582–002 and 2583–004]

Rochester Gas and Electric Corporation, New York; Notice of Availability of Final Multiple Project Environmental Assessment

February 21, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the applications for major new licenses for the Station 2 and Station 5 Projects, both located on the Genesee River, in Livingston and Monroe Counties, New York, and has prepared a Final Multiple Project Environmental Assessment (FMPEA) for the projects. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the existing projects and has concluded that approval of the projects, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FMPEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 1st Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4323 Filed 2–26–96; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of May 8 Through May 12, 1995

During the week of May 8 through May 12, 1995, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Lovelace Gas Service, Inc., 5/11/95 LEE–0131

Lovelace Gas Service, Inc. (Lovelace) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering Lovelace's request, the DOE found that the firm was not suffering a gross inequity or serious hardship. On October 4, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. A Statement of Objections to the Proposed Decision and Order was filed by William Lovelace, President of the company. After analyzing the arguments in the Statement of Objections, the DOE determined that Mr. Lovelace had not offered any additional evidence that the firm was experiencing a serious hardship or gross inequity. Therefore, the DOE issued a final Decision and Order denying Lovelace's Application for Exception.

Personal Security Hearing

Albuquerque Operations Office, 5/12/95 VSO–0020

An OHA Hearing Officer issued an opinion concerning the access authorization of an individual whose security clearance was suspended because he used illegal drugs. The individual, who represented himself, indicated at the hearing that he had been advised not to say anything at the hearing, and therefore did not present any witnesses, cross-examine the DOE's witnesses or offer any evidence on his own behalf. The Hearing Officer found that under the applicable regulations the purpose of a hearing is to allow the individual to provide support for his access eligibility. If he does not wish to offer such support, the regulations indicate that the Manager of the relevant Operations Office is to make a determination as to the access authorization issue. Accordingly, the Hearing Officer determined that the case file should be closed and the matter resolved by the Manager on the basis of the existing record.

Oak Ridge Operations Office, 5/8/95, VSO–0014

An Office of Hearings and Appeals Officer issued an opinion concerning the continued eligibility of an individual for access authorization under 10 CFR Part 710, entitled, ''Criteria and Procedures for Determining Eligibility for Access Authorization to Classified Matter or Special Nuclear Material.'' After considering the record in view of the standards set forth in Part 710, the Hearing Officer found that the individual: (i) Had been diagnosed by a board-certified psychiatrist as having a mental disorder which could cause a significant defect in the individual's judgment or reliability; (ii) was a user of alcohol habitually to excess and had been diagnosed by a board-certified psychiatrist as ''alcohol dependent''; and (iii) had engaged in criminal behavior which cast aspersion on the individual's reliability. In rejecting the individual's claim that he had been rehabilitated from his alcohol problem, the Hearing Officer found that the individual had not abstained from using alcohol for a sufficient period of time. With respect to the individual's mental disorder, the Hearings Officer found that there was no evidence in the record that the individual's condition was in remission or controlled by medication to the extent that recurrence of the condition was small. As for the individual's criminal conduct, the Hearing Officer found that the individual's alcohol problem and mental disorder were inextricably interwined with the incident which resulted in criminal charges being brought against the individual. Next, the Hearing Officer found that the circumstances surrounding the individual's criminal behavior raised questions about his reliability in a security context. Finally, the Hearing Officer concluded that there were no mitigating factors present in the case which could overcome the security concerns raised by the Department of Energy's Oak Ridge Operations Office. Accordingly, the Hearing Officer found that the individual's access authorization should not be restored.

Refund Applications

Morgan Products, Inc., 5/10/95, RF272–92251

The DOE issued a Decision and Order concerning the Application for Refund of a claimant in the Subpart V crude oil overcharge refund proceeding. The DOE determined that the applicant resold the refined petroleum products that formed the basis of its application and thus passed on the costs of any crude oil overcharges to its customers. Therefore, the DOE concluded that the claimant was not injured by any of the overcharges associated with the gallons that it purchased. Accordingly, the DOE denied the Application for Refund.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications,

which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Canadian Pacific Limited	RF272–90435	05/12/95
Southeastern Trailways, Inc	RF272–92940	.....
Corey Brothers, Inc	RC272–288	05/11/95
Dunham's Bay Boat Company	RF272–97318	05/11/95
Gulf Oil Corporation/Smith-Cale Co., Inc	RF300–16050	05/11/95
Morning Treat Coffee Company	RC272–289	05/11/95
Richard Vardeman, Inc	RC272–287	05/11/95
Ring Around Products, Inc	RF272–94081	05/10/95
Texaco Inc./Indresco, Inc	RF321–20560	05/11/95
The Bovaird Supply Co.	RF272–92824	05/10/95
Stebbins-Anderson Co., Inc	RF272–98116	.....

Dismissals

The following submissions were dismissed:

Name	Case No.
Anderson's Texaco Service	RF321–20680
Austin Texaco #2	RF321–12048
B&J Service	RF321–17755
Big Pine Trucking Co., Inc	RF272–97341
Greg T. Causey	RF321–15055
Idaho Operations	VSO–0026
Ken's Arco	RF304–15382
Mr. Mac's Texaco	RF321–11079
Oak Ridge Operations	VSO–0024
Tex Mart Texaco	RF321–19685
Thomas R. Caldwell	RF321–12952
Tony's Texaco	RF321–20656

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–4405 Filed 2–26–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of May 15 Through May 19, 1995

During the week of May 15 through May 19, 1995, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

International Federation of Professional and Technical Engineers, 5/18/95, VFA–0034

IFPTE filed an Appeal from a denial by the Idaho Operations Office of a Request for Information which it had submitted under the Freedom of Information Act. The Idaho Operations Office has refused to release the short list of best qualified candidates for the position of Deputy Assistant Manager for Program Execution. In considering the Appeal, the DOE found that the list was properly withheld under Exemptions 5 and 6.

U.A. Plumbers and Pipefitters, Local 36, 5/19/95, VFA–0035

U.A. Plumbers and Pipefitters, Local 36 (the Union) filed an appeal from a denial by the Department of Energy's (DOE) Idaho Operations Office (the Operations Office) of a Request for Information which the Union had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found the Operations Office's finding that DOE owned documents that were not in the DOE's possession are not subject to the FOIA to be erroneous. The DOE's finding was based upon the Operations Office's failure to apply DOE FOIA Regulation 10 CFR 1004.3(e)(1). The DOE also found that some of the documents requested by the Union were not subject to the FOIA because those documents were neither in DOE's possession nor owned by the DOE. Accordingly, the Appeal was remanded to the Operations Office.

Personnel Security Hearing

Albuquerque Operations Office, 5/19/95, VSO–0016

Under the provisions set forth in 10 CFR Part 710, the Department of Energy, Albuquerque Operations Office (DOE/AL) suspended the access authorization (''Q'' level security clearance) of an individual based upon disqualifying criteria set forth in 10 CFR 710.8(j), viz., that the individual ''has been, or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist as alcohol dependent or as suffering from alcohol abuse.'' Following a hearing convened at the request of the individual, the Hearing Officer found that (i) the individual was properly diagnosed by a DOE consultant-psychiatrist as alcohol dependent, based upon substantial derogatory information contained in the record which was uncontroverted by the individual, and (ii) the individual has failed to present adequate evidence of rehabilitation, reformation or other mitigating factors. Accordingly, the Hearing Officer concluded that the

individual's access authorization should be restored.

Implementation of Special Refund Procedures

Bell Fuels, Et Al, 5/19/95, LEF–0061, ET AL.

The DOE issued a Decision and Order announcing procedures to distribute $866,352.24, plus accrued interest, remitted to the DOE pursuant to Consent Orders issued to 18 resellers and retailers of refined petroleum products. In the absence of sufficient information to implement standard procedures for direct restitution to injured customers of the consenting firms, the DOE will accept refund claims from any injured customers who come forward and will devise refund procedures based on the information these applicants provide. If no such customers come forward, the funds obtained from these firms, plus accrued interest, will be made available to state governments for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986. The deadline for filing Applications for Refund is September 29, 1995.

Gulf Oil Corporation, 5/19/1995, KFX–0037

The Department of Energy issued a Decision and Order covering the disbursal of $104,050,661 in crude oil overcharge monies made available pursuant to a settlement agreement with Gulf Oil Corporation. The DOE divided the funds pursuant to the Modified Statement of Restitutionary Policy. Accordingly, the DOE disbursed 20 percent of the funds plus interest ($37,309,761) for direct restitution to end users of refined petroleum products. The DOE further determined that the States had already received a partial payment from the Gulf crude oil funds and were entitled to an additional principal amount of $4,827,700, interest of $3,827,715, plus a reimbursement of $51,114, for a payment made by the Federal government to Sage Creek Refining Company. The total disbursement to the States was, therefore, $8,706,529. The amount disbursed to the Federal Government was equal to the States' share, less the Sage Creek adjustment, or $8,604,301.

MAPCO International, Inc., 5/19/95, VEF–0004

The DOE issued a Decision and Order announcing procedures for disbursement of $7,280,202, plus accrued interest, in crude oil overcharges obtained by the DOE pursuant to a June 23, 1994 Settlement Agreement with MAPCO, Inc. and MAPCO International, Inc. The OHA has determined that the funds obtained from MAPCO, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases.

Refund Applications

Sears Logistics Services, Inc., 5/19/95, RF272–92021

The DOE issued a Decision and Order concerning an Application for Refund in the Subpart V crude oil overcharge refund proceeding filed by Sears Logistics Services, Inc. The DOE determined that Sears Logistics Services, Inc., was not entitled to a refund since its parent, Sears Roebuck and Co., had filed a Retailers Escrow Settlement Claim Form and Waiver, in which it requested a Stripper Well refund from the Retailers escrow, thereby waiving its right and the right of its subsidiaries, to a Subpart V crude oil refund. Accordingly, the Application for Refund was denied.

Texaco Inc./Elm Garage, Inc., 5/16/95, RF321–20935, RF321–21053, RF321–21066, RF321–21067

The DOE issued a Decision and Order in the Texaco Inc. special refund proceeding concerning four applicants who had applied on behalf of a service station, Elm Garage, Inc. (Elm Garage) was operated during the price control period as a 50/50 partnership by two bothers, Adam, who passed away in 1988, and Joseph Polek. Applications were received from Joseph Polek; Martha Polek, Adam's widow; Richard Polek, Adam's son; and the Adam R. Polek Trust (The Trust). In its Decision, the DOE construed Adam's 1969 will in which he devised his stock in Elm Garage to Richard, devised ''tangible personal property'' to Martha, and named the Trust, with Martha as beneficiary, as the residuary devisee. After execution of that will, Adam suffered an incapacitating stroke, and Elm Garage was dissolved. The DOE determined that because the corporation was dissolved after Adam had become incompetent, the devise of the Elm Garage stock had not been adeemed, i.e., revoked, and thus found Richard still entitled to Adam's portion of the refund. The DOE next determined the volumes purchased by Elm Garage based on check register receipts and motor gasoline prices from Platt's Oil Price Handbook and Oilmanac. Further, the DOE reduced, on a year-by-year basis, the per gallon volumetric refund amount of Elm Garage by the percentage of non-Texaco motor gasoline that its supplier purchased during the consent order period. Thus, the DOE granted Joseph Polek's and Richard Polek's applications, denied the Trust's application, and dismissed Martha's application.

Town of Bristol, 5/19/95, RR272–190

The DOE issued a Decision and Order granting a Motion for Reconsideration filed by the Town of Bristol (Bristol) in the Subpart V crude oil refund proceeding. Bristol's original Application for Refund was dismissed on February 8, 1995, on the grounds that the town had failed to respond to DOE's requests for additional information. In its Motion for Reconsideration, Bristol stated that it had sent the DOE a letter the previous August in response to its requests. Accordingly, Bristol's Motion for Reconsideration was granted.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supplemental Refund Distribution	RB272–2	05/15/95
Gulf Oil Corporation/Bourque's Gulf Service et al	RF300–14615	05/19/95
Gulf Oil Corporation/Buccellato and Chase et al, Bartco Petroleum Corp	RF300–13333 RF300–17593	05/15/95
McKelvey Trucking Co	RC272–291	05/15/95
Parker K. Bailey & Sons, Inc	RC272–290	05/19/95
Texaco Inc./Davis Texaco et al	RF321–10307	05/16/95
Texaco Inc./Myers Texaco	RF321–20374	05/16/95
Texaco Inc./Rick's Texaco	RF321–20494	05/16/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Blende Texaco	RF321–20302
Buckley & Company	RF321–20321
City of Vineland Electric	RF321–20236
Continental Baking Co	RF321–19854
Conway Dyno Alignment Service	RF321–20306
Courville's Garage	RF321–20773
Express Texaco	RF321–20219
Fruehauf Trailer Corp	RF321–20350
Kanab Texaco	RF321–6331
Murray's Texaco Service Station	RF321–19287
Partanna's Texaco	RF321–20239
Queen's Texaco on Providence	RF321–20387
Taylor's Texaco Service	RF321–20261
Walter Luther Texaco	RF321–11342

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–4404 Filed 2–26–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of June 19 Through June 23, 1995

During the week of June 19 through June 23, 1995, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

A. Victorian, 6/22/95, *VFA–0043*

Dr. A. Victorian filed an Appeal from a determination issued by the Oakland Operations Office (Oakland) of the Department of Energy in response to a request under the Freedom of Information Act (FOIA). Dr. Victorian sought documents concerning ''Project Woodpecker'' at Lawrence Livermore National Laboratory. The Oakland determination denied Dr. Victorian's request on the grounds that the DOE had no responsive documents. In considering this Appeal, the DOE found that Oakland followed procedures that were reasonably calculated to uncover responsive documents. Accordingly, the DOE denied Dr. Victorian's Appeal.

Ferenc M. Szasz, 6/22/95, *LFA–0254*

Ferenc M. Szasz filed an Appeal from a denial by the National Archives and Records Administration of a request for information that he filed under the Freedom of Information Act (FOIA). Professor Szasz sought specified reports contained in Manhattan Project files. In considering the information that was withheld as classified material under Exemptions 1 and 3 of the FOIA, the DOE determined that all of the previously withheld material must continue to be withheld. Accordingly, the Appeal was denied.

Petition for Special Redress

State of Louisiana, 6/20/95, *VEG–0001*

The DOE issued a Decision and Order granting a Petition for Special Redress filed by the State of Louisiana. Louisiana sought approval to use Stripper Well funds for a project which the DOE's Assistant Secretary for Energy Efficiency and Renewable Energy held to be inconsistent with the terms of the Stripper Well Settlement Agreement. The DOE approved the State's proposal to use $11,650,915 to establish a Louisiana Petroleum Information Center (PIC). The PIC will be a central archive for Louisiana geological data, including stratigraphic data collected by the major oil companies and the oil and gas archives of the Louisiana Department of Natural Resources. The DOE found that the PIC would bring energy-related restitutionary benefits to the citizens of Louisiana and could be approved as an energy research program under the terms of the Stripper Well Settlement Agreement. Accordingly, Louisiana's Petition for Special Redress was approved.

Refund Applications

Gulf Oil Corp./FASCO, Inc., 6/22/95, T3RF300–8238

The DOE issued a Decision and Order concerning a refund application filed by FASGO, Inc. in the Gulf Oil Corporation refund proceeding. FASGO calculated the volume of its refined product purchased by referring to its own company records. The DOE found that the records were reasonable, and used them to calculate a refund of $60,014, including interest, for the firm. The DOE further noted that FASGO, a bankrupt firm, was no longer in existence. The record in the case included an Order from the United States Bankruptcy Court for the Eastern District of Pennsylvania stipulating that upon payment of administrative expenses and of a certain claim by the Commonwealth of Pennsylvania, two former owners of FASGO would be entitled to all liquidated assets of the firm. These former owners submitted evidence showing that the payments had been made. Accordingly, the DOE directed that these two individuals should receive the FASGO refund.

Gulf Oil Corporation/the Circle K Corporation, Fairmont Foods, Inc., 6/22/95, RF300–19969, RF300–19994

The DOE issued a Decision and Order concerning Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by The Circle K Corporation and Fairmont Foods, Inc. The Circle K Corporation requested that the OHA grant it a refund based on separate presumptions of injury for each of three subsidiaries which purchased Gulf products. The OHA found that while the three subsidiaries were operated as separate entities during the

refund period, they are no longer operationally distinct. Accordingly, the OHA determined that they do not qualify for consideration under separate presumptions of injury. The OHA also found that The Circle K Corporation could not receive a full volumetric refund for purchases made by a subsidiary for end-use, in addition to benefitting from the small claims presumption of injury for its two subsidiaries that were retailers of Gulf products. Instead, the OHA ordered that the applicant be granted a full volumetric refund for end-use purchases, and refunds under the mid-range presumption of injury for purchases made by its retailer subsidiaries. Accordingly, the Circle K Corporation was granted a total refund of $15,046. In addition, the OHA denied a competing Application for Refund filed by Fairmont Foods, Inc.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Gulf Oil Corporation/Bracknell Oil Co., Inc	RF300–19716	06/22/95
Quality Gulf	RF300–19987	
Valley View Gulf	RF300–19991	
Gulf Oil Corporation/Denison Oil Co., Inc	RF300–20066	06/22/95
H.R. Higgins Excavating et al	RF272–97036	06/23/95
Old Colony Transportation et al	RF272–90436	06/23/95
Roane County et al	RF272–97600	06/23/95
Sequim School District et al	RF272–97701	06/23/95
Texaco Inc./Look Oil Co	RF321–20305	06/23/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Acme Resin Corporation	RF272–58053
Brattlebono Memorial Hospital	RF272–99147
Butler Landmark Inc	RG272–194
Dallas County Schools	RF272–55467
Digital Equipment Corporation	RF272–53469
DSM Copolymer	RF272–58418
Farmers Elevator & Cooperative Association	RG272–279
International Flavors & Fragrance	RF272–14036
Jamaica Bay Oil Co	RF321–20562
MacArthur Petroleum & Solvent Co	RF321–20576
McLaurin's Texaco	RF321–19757
Nash Equity Exchange	RG272–25
National Standard Company	RF272–17314
Pollard Delivery Service	RF272–89521
Windsor Village Texaco	RF321–20166
Wyatt's Service	RF315–10163

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–4403 Filed 2–26–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders; Week of July 24 Through July 28, 1995

During the week of July 24 through July 28, 1995 the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Blumberg, Seng, Ikeda & Albers, 7/25/95, *VFA–0052*

Blumberg, Seng, Ikeda & Albers filed an Appeal from a partial denial by the DOE's Office of the Inspector General of a Request for Information that it submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the FOIA's Exemptions 6 and 7(C) had been properly invoked to withhold the names and other personal identifiers of subjects, sources, witnesses and investigators in connection with the Inspector General's investigation of the death of a particular individual at the Naval Petroleum Reserves in Elk Hills, California. Accordingly, the Appeal was denied.

Petition for Special Redress

State of Louisiana, 7/28/95, *VEG–0002*

The DOE issued a Decision and Order denying a Petition for Special Redress filed by the State of Louisiana. Louisiana sought approval to use Stripper Well funds to match a DOE grant to establish a Natural Gas Pre-Utilization Center at Southern University. Louisiana wished to use the Stripper Well funds to study the

relationship between the geological formation of natural gas fields and the levels of radioactivity in the water brought to the surface as part of the oil and gas extraction process. If successful, the study would provide natural gas producers with data that would allow them to assess probable levels of radioactivity at a site before drilling, thus reducing the volume of radioactive materials brought to the surface. DOE's Assistant Secretary for Energy Efficiency and Renewable Energy had determined that this proposal was inconsistent with the terms of the Stripper Well Settlement Agreement in that its main focus was environmental. Louisiana argued in its Petition that the study was authorized by the Chevron consent order, which allows the use of oil overcharge funds for enery research. The OHA agreed with the initial assessment of Louisiana's proposal and concluded that the project could not qualify as an energy research program under the terms of the Chevron consent order because it was not remedial in nature. Accordingly, Louisiana's Petition for Special Redress was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Central Valley Coop Consumers Oil Co	RF272–92208 RF272–92230	07/25/95
Crude Oil Supplemental Refund Distribution	RB272–14	07/25/95
Crude Oil Supplemental Refund Distribution	RB272–20	07/25/95
Crude Oil Supplemental Refund Distribution	RB272–24	07/28/95
Gibraltar School District et al	RF272–84697	07/28/95
Nome City School District et al	RF272–95900	07/28/95
Reserve School District et al	RF272–95426	07/25/95
Texaco Inc./Second Avenue Texaco	RF321–20643	07/25/95
Texaco Inc./Short Stop, Inc	RF321–6657	07/28/95
Texaco Inc./Squaw Transit Co	RF321–8846	07/28/95
Texaco Inc./Webb Texaco Station et al	RF321–1486	07/28/95
Texaco Inc./Whittaker Metals, Inc	RF321–9170	07/28/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Herbert Easterly	VFA–0054
Hopson's Texaco Service Station	RF321–20386
McMinn Texaco	RF321–4191
Rocky Flats Field Office	VSO–0033
San Diego Transit Corporation	RF272–97153

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–4402 Filed 2–26–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of May 22 Through May 26, 1995

During the week of May 22 through May 26, 1995, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

A. Victorian, 5/22/95, VFA–0036

Dr. A. Victorian (Appellant) filed an Appeal from a final determination by the Acting Director of the Office of Intergovernmental and External Affairs of the Albuquerque Operations Office of the Department of Energy (DOE/AL). DOE/AL withheld certain documents identified as responsive to Appellant's request on the grounds that they contained sensitive and personal information. Although the person named in the documents was deceased, DOE/AL found that the surviving relatives of the named individual had a privacy interest in the information and withheld the documents under Exemption 6. In considering the Appeal, the DOE found that while a privacy interest in the information existed, DOE/AL did not balance this interest against the public interest in disclosing the information. Accordingly, the Appeal was remanded to DOE/AL so that it could balance the privacy interest of surviving relatives against the public interest in disclosure in a manner consistent with this Decision.

Personnel Security Hearings

Albuquerque Operations Office, 5/22/95, VSO–0018

An OHA Hearing Officer issued an Opinion recommending against restoring the access authorization of a DOE contractor employee. The employee's ''Q'' clearance had been suspended by the Operations Office Manager after a DOE-sponsored psychiatrist found that the employee was a user of alcohol habitually to excess and suffered from ''substance abuse, alcohol,'' a mental condition which causes or may cause a significant defect in judgment or reliability. The

evidence in the record indicated that the employee had a lengthy history of arrests and convictions for alcohol-related traffic offenses, including two within the last 18 months. At the hearing, the employee admitted that he had been an alcohol abuser, but introduced evidence of his progress towards rehabilitation during the six month period immediately prior to the hearing. The Hearing Officer concluded that the employee had not as yet abstained from alcohol long enough to demonstrate that he was rehabilitated from his drinking problem, and that as a result, the employee's history of alcohol abuse still raised serious security concerns. For these reasons, the Hearing Officer concluded that the employee had failed to show that restoring the employee's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.

Albuquerque Operations Office, 5/25/95, VSO–0019

A DOE Hearing Officer issued an Opinion concerning the eligibility of an individual for continued ''Q'' access authorization. Tests conducted as part of a routine annual physical examination indicated that the individual had used cocaine. The individual claimed that he had not used cocaine. He argued that this use of certain over-the-counter medications prior to the drug test should have resulted in positive results for drugs other than cocaine, and that the lack of such results proved that the tested specimen was not his. After reviewing the chain-of-custody documentation for the specimen and considering expert testimony on the effects of over-the-counter medications on drug tests, the Hearing Officer found that the tested specimen was the individual's and the individual must have used cocaine. The Hearing Officer, therefore, found that the individual's denials of cocaine use were falsifications and that the individual had violated a drug certification which he had signed. The Hearing Officer concluded that the individual's access authorization should not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supple. Refund Distribution et al	RB272–4	05/23/95
Crude Oil Supplemental Refund Distribution et al	RB272–3	05/23/95
Gloucester Trucking	RF272–97259	05/23/95
Kessler Institute for Rehab et al	RF272–92130	05/23/95
Squaw Transit Co	RF272–74580	05/23/95
Squaw Transit Co	RD272–74580	
Texaco Inc./Al's Texaco	RF321–13059	05/22/95
Texaco Inc./Associated Transport, Inc	RF321–13106	05/23/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Albany Independent School District	RF272–97390
Andy's Texaco	RF321–20772
Bill Clendening Texaco	RF321–20749
Energy Cooperative, Inc	RF340–120
Gall Silica Mining Co., Inc	RF272–97436
Harvey Texaco	RF321–20766
Leaseway Transportation Corp	RF272–97308
Liberty County Board of Commissioners	RF272–97432
Oklahoma State University	RF272–98486
Richard M. Ross	VFA–0042
Roaring Spring, PA	RF272–86781
Texaco Gas Station	RF321–20762
The Gates Rubber Company	RF272–88647
The Gates Rubber Company	RF272–93720
Unico, Inc	RF321–6384
Valley Line Company	RF272–98124
Victoria Independent School District	RF272–97440

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–4407 Filed 2–26–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of August 21 through August 25, 1995

During the week of August 21 through August 25, 1995 the decisions and orders summarized below were issued with respect to applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also

contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Murray, Jacobs & Abel, 8/22/94, VFA–0061

The DOE's Office of Inspector General (OIG) requested reconsideration of a July 1995 Decision and Order issued to Murray, Jacobs & Abel (MJ&A), Case No. VFA–0050. That Decision remanded a Freedom of Information Act (FOIA) request to the OIG for a new determination pursuant to Exemption 7(A) of the FOIA, and consistent with *Albuquerque Journal,* 22 DOE ¶ 80,148 (1992). The OIG argued that under federal court decisions the government met its burden if it demonstrated that release of the types of documents at issue could reasonably be expected to interfere with enforcement proceedings generally and that the government need not make a particularized showing of harm with respect to the enforcement proceeding at issue. Upon reconsideration, the DOE agreed and overturned the *Albuquerque* decision to the extent that it required such a particularized showing.

Refund Applications

GS Roofing Products Company, Inc., 8/23/95, RF272–93215

The DOE issued a Decision and Order granting an Application for Refund filed by GS Roofing Products Company, Inc. in the Subpart V crude oil refund proceeding. The DOE determined that in addition to GS's asphalt products, slate oil was a covered product eligible for a refund because it was made from napthenic crude oil and came from a refinery. The refund granted to GS in this Decision was $378,610.

Standard Oil Co. (Indiana)/Nebraska, 8/23/95, RM251–295

The DOE issued a Decision and Order granting a Motion for Modification of a previously-approved refund plan filed by the State of Nebraska in the Standard Oil Co. (Indiana) second stage refund proceeding. Nebraska requested permission to reallocate $50,000 in previously disbursed Amoco II monies to the business sector of the Dollar and Energy Saving Loan Program. The program is a revolving loan program that provides low interest loans to Nebraska citizens for energy efficiency improvements to homes, businesses, farms, local government structures, and rural nursing homes. In accordance with a prior Decision that approved the use of second stage funds for the program, the DOE granted Nebraska's Motion.

Texaco Inc./Gasolinera Melendez, Inc., 8/23/95, RR321–180

The DOE issued a Decision and Order concerning a Motion for Reconsideration regarding an Application for Refund filed by Gasolinera Melendez, Inc. (GM) filed in the Texaco Inc. special refund proceeding. GM's Application for Refund had been dismissed in a prior Decision because its Application had been submitted to the DOE several months after the February 28, 1994 final deadline for the Texaco proceeding. In the prior Decision, the DOE rejected GM's arguments that the lack of notice given to applicants in Puerto Rico about the existence of the Texaco refund proceeding constituted a compelling reason to process its application. In its Motion for Reconsideration, GM argued again that Puerto Rican retailers had little knowledge concerning the Texaco proceeding while retailers in the 50 States had much more notice about the proceeding and that this disparity was fundamentally unfair and constituted an equitable consideration favoring the processing of its application. The DOE held that retailers in Puerto Rico had the opportunity to learn about the existence of the Texaco proceeding since proper Notices were published in the Federal Register regarding the establishment of the Texaco proceeding and that many retailers in the United States also did not receive actual notice. The DOE found that any disparity in notice provided to Puerto Rican retailers was not a sufficient equitable consideration sufficient to warrant processing GM's application since the DOE, in consideration of this disparity, accepted applications from Puerto Rico retailers received in the month of March 1994. The DOE also rejected GM's claim that processing its claim after the final deadline would cause no harm to the refund process. Because DOE found that GM had presented no equitable consideration meriting the processing of its Application for Refund, GM's Motion for Reconsideration was dismissed.

Texaco Inc./Pea Ridge Iron Ore Co., Inc., 8/23/95, RF321–8850

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding. Pea Ridge Iron Ore Co., Inc. (Pea Ridge) applied for a refund based upon direct Texaco purchases made by another corporation, Meramec Mining Co. In support of its application, Pea Ridge argued that it was entitled to Meramec's refund by virtue of the fact that Meramec was wholly owned subsidiary of St. Joe Mineral Corporation (St. Joe) which dissolved Meramec and transferred all of its assets and facilities to another wholly owned corporation it created, Pea Ridge. The DOE held that Pea Ridge was created by St. Joe to continue the business operations of the prior dissolved corporation, Meramec, and that since St. Joe owned all of the outstanding stock of both Meramec and Pea Ridge, the entire transaction was simply a change in corporate form rather than a true ownership change. Consequently, the DOE held that, given the above transaction, Meramec's right to a refund was transferred to Pea Ridge. The DOE approved a refund for Pea Ridge totalling $24,875, representing $16,669 in principal plus $8,206 in interest.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Maple Canyon Arco et al	RF304–13663	08/23/95
Bethel Utilities Corporation	RF272–2638	08/23/95
Enron Corp./Kay & Herring Gas Company	RF340–132	08/23/95
Texaco Inc./Arroyo Service Station	RF321–21069	08/23/95
Texaco Inc./Dravo Corp. et al	RF321–18353	08/23/95
Texaco Inc./Red Carpet Car Wash	RF321–7893	08/23/95
Tom Inman Trucking, Inc.	RK272–239	08/23/95
Boss-Linco Lines, Inc.	RK272–240	
Uniroyal Technology Corp.	RF272–97573	08/23/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Clarke County, Virginia	RF272–86668
Mort Hall Aviation	RF304–15150

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–4408 Filed 2–26–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of August 14 through August 18, 1995

During the week of August 14 through August 18, 1995 the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Greg Long, 8/15/95, VFA–0060

Greg Long filed an Appeal from a determination issued to him by the Office of Public Affairs of the DOE's Albuquerque Operations Office in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In that determination, the Albuquerque Operations Office had withheld under the Exemption 5 ''deliberative process privilege'' a draft of a never-finalized or issued report investigating a mysterious ''hum'' reported in and around Taos, New Mexico. In considering the Appeal, the DOE found that the Albuquerque Operations Office had not determined whether the document contained deliberative material. In addition, the DOE had not determined whether the document contained segregable non-exempt material or whether the document qualified for withholding under the standard articulated in the October 1993 Memorandum of Attorney General Janet Reno concerning the FOIA. Accordingly, the Appeal was granted in part, denied in part, and remanded to the Albuquerque Operations Office for a new determination in accordance with the guidance set forth in the Decision and Order.

Personnel Security Hearing

Rocky Flats Field Office, 8/14/95, VSO–0027

An Office of Hearings and Appeals Hearing Officer issued an opinion concerning the eligibility of an individual for access authorization under 10 CFR Part 710, ''Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.'' After considering the record in view of the standards set forth in Part 710, the Hearing Officer found that the individual adequately demonstrated rehabilitation from a history of alcohol abuse. Accordingly, the Hearing Officer found that the individual's access authorization should be granted.

Refund Applications

Enron Corp./Ozona Butane Company, Inc., Bob's L.P. Gas, Inc., B.F. Goodrich Chemical Group, 8/16/95, RF340–58, RF340–110, RF340–144

The DOE issued a Decision and Order concerning refund applications that Ozona Butane Company, Inc. (Ozona), Bob's LP Gas, Inc. (Bob's), and B.F. Goodrich Chemical Group (GCG) had submitted in the Enron Corporation (Enron) special refund proceeding. The DOE found that Ozona and Bob's were retailers of Enron products who qualified for refunds under the small claim presumption of injury. However, both firms purchased Enron product indirectly through Gartman Butane Company, Inc. (Gartman). The DOE collected information from Gartman in order to determine the portion of Gartman purchases by Ozona and Bob's that were Enron products. The DOE found that GCG used Enron propane as a feedstock to produce vinyl, and therefore that GCG was entitled to a refund for its purchases from Enron under the presumption of injury for end-users of Enron products. The total refund granted to Ozona, Bob's and GCG, including interest, is $10,914.

General Electric Company, 8/16/95, RF272–25357, RD272–25357

The DOE issued a Decision and Order granting an Application for Refund filed by General Electric Company (GE), a large diversified industrial corporation, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. Noting that the applicant did business in many markets, the States contended that a claim of 100% absorption of overcharges by a conglomerate such as GE is not reasonable. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. In addition, the DOE found that GE's purchases of ethane, chlorobenzene, acetic anhydride, polypropylene, isopropanol, isoproply alcohol, methyl, cellosolve, cresylic acid, phenol, acetone, cumene, styrene, EPON 828/829, tetra-bromo bisphenol, and butadiene were not eligible for a crude oil refund. Finally, the DOE considered the validity of a waiver of the right to a crude oil refund filed in the Stripper Well Surface Transporters (ST) proceeding on behalf of RCA Corporation, which had been acquired by GE in a merger completed on June 9, 1986. The DOE found that where a dismissed ST application had not been filed by an authorized representative, the waiver had not been validly executed, and, therefore, the claimant had not waived its right to a Subpart V refund. The refund granted to the applicant in this Decision was $2,536,874.

Texaco Inc./ J.E. Meintzer & Sons, Inc., 8/15/95, RF321–4048

The DOE issued a Decision and Order in the Texaco Inc. special refund proceeding concerning J.E. Meintzer &

Sons, Inc. (J.E. Meintzer & Sons), a direct purchaser of Texaco products. The DOE had previously determined that the purchase volumes of refund claims filed by affiliated firms should be combined in order to determine one allocable share for the applicants. In the instant case, a substantial amount of common ownership interest existed previously between J.E. Meintzer & Sons and two other companies which have been granted refunds in the Texaco proceeding. Nonetheless, the DOE determined that because the degree of this common ownership has been dramatically decreased, none of the involved companies are currently affiliated to a degree that would result in windfall benefits to a single corporate entity or shareholder. Thus, the DOE found that J.E. Meintzer & Sons' refund should not be reduced by the refunds granted the other two firms.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Brookvale Arco et al	RF304–14096	08/16/95
Bloomer Coop Feeds et al	RF272–86665	08/16/95
Crude Oil Supplemental Refund Distribution	RB272–8	08/15/95
Crude Oil Supplemental Refund Distribution	RB272–43	08/15/95
Crude Oil Supplemental Refund Distribution	RB272–42	08/15/95
Crude Oil Supplemental Refund Distribution	RB272–39	08/15/95
Crude Oil Supplemental Refund Distribution	RB272–37	08/15/95
Deback Cartage Company	RF272–97087	08/15/95
Dryer and Geodecke, Inc	RA272–71	08/16/95
Elmer Bowerman et al	RK272–424	08/15/95
Federal Reserve Bank of New York et al	RF272–90224	08/16/95
J.L. Anderson Co., Inc. et al	RF272–77264	08/16/95
Leboeouf Brothers Towing Company, Inc	RF272–69366	08/16/95
Leboeouf Brothers Towing Company, Inc	RD272–69366	
Monroe County Commission et al	RF272–97541	08/16/95
Ranson Farmers Coop Union et al	RF272–97161	08/16/95
Texaco Inc./Kelly's Food Store et al	RF321–19433	08/16/95
Texaco Inc./Ray's Texaco	RF321–20416	08/15/95
Cunningham's Texaco	RF321–20691	
Texaco Inc./Villa Street Service Station	RF321–20724	08/16/95
International Harvester	RF321–20755	
Webster School District et al	RF272–95425	08/16/95

Dismissals

The following submissions were dismissed:

Name	Case No.
City of Villa Park, CA	RF272–86154
Robert Hawthorne, Inc	RF272–86818
Silsbee Butane Company	RF304–15155
Thomas Fredrich	RF304–15146

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–4409 Filed 2–26–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5430–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Tribal Assumption of the Clean Water Act, Section 404 Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) renewal has been forwarded to the Office of Management and Budget (OMB) for review and approval: Tribal Assumption of the Clean Water Act, Section 404 Permit Program, OMB Control Number 2040–0140, expiring 02/29/96. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 28, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1542.03.

SUPPLEMENTARY INFORMATION:

Title: Tribal Assumption of the Clean Water Act, Section 404 Permit Program, OMB Control Number 2040–0140, EPA ICR No. 1542.03), expiring 02/29/96. This is a request for extension of a currently approved collection.

Abstract: Federally recognized Indian Tribes are eligible to request assumption of the Clean Water Act (CWA) Section 404 permit program. Tribes must demonstrate that they meet the requirements in Section 518 of CWA as well as the Section 404 program specific requirements of 40 CFR part 233.

To assume the Section 404 permit program, Tribes must have a wetlands permit program similar to the Federal permit program. The Tribe must submit sufficient information for EPA to determine that the Tribe's program:

—Has an equivalent scope of jurisdiction as the Federal program,
—Regulates at least the same activities as the Federal program,
—Provides for sufficient public participation,
—Ensures compliance with the Section 404(b)(1) Guidelines, which provide environmental criteria for permit decisions, and
—Has adequate enforcement authority.

EPA eliminated unnecessary duplication when revised regulations were published in December 1994. Prior to this regulatory revision, Tribes first had to qualify for ''treatment as a State.'' Only after the Tribe completed the ''treatment as a State'' determination, could the Tribe apply to assume the Section 404 permit program. Under the revised regulations, this is all done at the same time with only one submission needed from the Tribe, instead of the previous two separate submissions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 10/12/95 (60 FR 53184); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 520 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Responents/Affected Entities: Indian Tribes.

Estimated Number of Respondents: One per year.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 520 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1542.03 and OMB Control No. 2040–0140 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street SW., Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

Dated: February 20, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–4390 Filed 2–26–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5430–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Water Quality Standards Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) renewal has been forwarded to the Office of Management and Budget (OMB) for review and approval: Water Quality Standards Regulation (OMB Control Number 2040–0049; expiring February 29, 1996). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 28, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 988.06.

SUPPLEMENTARY INFORMATION:

Title: Water Quality Standards Regulation (OMB Control No. 2040–0049; EPA ICR No. 0988.05, expiring on 2/29/96. This is a request for extension of a currently approved collection.

Abstract: Water quality standards are provisions of Federal, State, or Tribal law which consist of designated uses for the waters of the United States, water quality criteria for the waters based on such uses, and an antidegradation policy. Such standards serve two primary purposes. First, they define water quality goals for water bodies. Second, they serve as a regulatory basis for establishing water quality-based treatment controls and strategies beyond technology-based treatment required by Sections 301 and 306 of the Clean Water Act (CWA).

The Water Quality Standards Regulation (the Regulation) describes requirements and procedures for the

States and Indian Tribes to develop, review, and revise their water quality standards regulations and for EPA to review and approve the water quality standards. Additionally, the Regulation outlines procedures whereby Indian Tribes can qualify to receive EPA authorization to administer the water quality standards program contained in Section 303 of the CWA. Finally, the Regulation contains a dispute mechanism to aid in resolving disputes which may arise between States and Indian Tribes over differing water quality standards on common bodies of water.

This information collection covers State/Tribal submissions of water quality standards to EPA for review and approval, and Tribal applications submitted to EPA for authorization to administer the water quality standards program. Additionally, this information collection covers the submission of information by States and Indian Tribes to EPA for use in resolving disputes that arise on common bodies of water.

The information collection schedule is required pursuant to the mandates of CWA Sections 303(c) and 518. Indian Tribes (that are authorized to administer the water quality standards program) and States are required to hold hearings at least once every three years for the purposes of reviewing and, if appropriate, revising their water quality standards. Tribal applications for authorization to administer the water quality standards program are a one-time collection of information. Requests for dispute resolution are also a one-time collection of information per dispute.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 10/25/95 (60 FR 54682); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2,500 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States, Territories, and Indian Tribes.

Estimated Number of Respondents: 77.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 193,980 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 988.06 and OMB Control No. 2040–0049 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street NW, Washington, DC 20503.

Dated: February 20, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–4389 Filed 2–26–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5430–8; OMB No. 2060–0106 EPA No. 0649.06]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D)), this notice announces that the Information Collection Request (ICR) for 40 CFR Part 60 Subpart EE—Surface Coating of Metal Furniture described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 28, 1996.

FOR FURTHER INFORMATION OR A COPY CALL:

Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0649.06.

SUPPLEMENTARY INFORMATION:

Title: 40 CFR Part 60 Subpart EE—Surface Coating of Metal Furniture (OMB Control No. 2060–0106; EPA ICR No. 0649.06.). This is a request for revision of a currently approved collection. The standards require initial notification reports with respect to construction, modification, reconstruction, startups, shutdowns, and malfunctions. The standards also require reports on initial performance tests.

Abstract: The control of emissions of VOCs from the metal furniture surface coating industry requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Emissions of VOCs from the metal furniture surface coating industry are the result of the application and curing or drying of organic coatings on the surface of each metal furniture part or product. These standards rely on the reduction of VOC emissions through either a capture system and incinerator or a capture system and solvent recovery system.

In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on November 24, 1995 and no comments were received.

Burden Statement: Each year of this request the EPA will receive 1600 responses. These responses include notification of start-up and performance test results for a total 186 responses, quarterly exceedance reports for a total of 472 responses, and semi-annual non-exceedance reports for a total of 942 responses. The reporting and recordkeeping burden can be separated into two parts. Initial start-up, performance testing, and notification

requires 80 hours. Each year an estimated 36 facilities will face this burden. Continued monitoring, reporting, and recordkeeping requires 179 hours annually. Each year an estimated 589 facilities will face this burden. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Initial Start-Up

Respondents/Affected Entities: 1.

Estimated Number of Respondents: 36.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 80 hours/facility.

Estimated Total Annualized Cost Burden: $2,436/facility.

Continued Monitoring, Reporting, and Recordkeeping

Respondents/Affected Entities: 1.

Estimated Number of Respondents: 589.

Frequency of Response: 2.

Estimated Total Annual Hour Burden: 179 hours/facility.

Estimated Total Annualized Cost Burden: $5,451/facility.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0649.06 and OMB Control No. 2060–0106 in any correspondence to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: February 20, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–4391 Filed 2–26–96; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30403; FRL–5350–9]

Ciba-Geigy Corporation; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 28, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30403] and the file symbol to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will 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 [OPP–30403]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Product Manager (PM 21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703) 305–6226; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 100-TOR. Applicant: Ciba Crop Protection, Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419-8300. Product Name: Mefenoxam Technical. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid ethyl ester at 97.0%. Proposed Classification/Use: For formulation into end-use fungicide products. Type Registration: Conditional. (PM 21)

2. File Symbol: 100-INE. Applicant: Ciba Crop Protection. Product Name: Mefenoxam WSP. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 45.0%. Proposed Classification/Use: For the control of certain diseases in various crops caused by the Oomycete class of fungi. Type Registration: Conditional. (PM 21)

3. File Symbol: 100-ING. Applicant: Ciba Crop Protection. Product Name: Mefenoxam MZ. Fungicide. Active Ingredients: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 4.0% and a coordination product of zinc ion and manganese ethylene bisdithiocarbamate at 64.0% in which the ingredients are manganese (12.8%) and zinc (1.6%). Proposed Classification/Use: For the control of certain diseases of cucumbers, melons, summer squash, grapes, onions,

potatoes, sugar beets, and tomatoes. Type Registration: Conditional. (PM 21)

4. File Symbol: 100-INN. Applicant: Ciba Crop Protection. Product Name: Mefenoxam/Bravo. Fungicide. Active Ingredients: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 4.5% and Chlorothalon-il:Tetrachloroisophthalonitrile at 72.0%. Proposed Classification/Use: For the control of certain diseases in carrots, broccoli, cabbage, cauliflower, cucurbit vegetables, onions, potatoes, and tomatoes. Type Registration: Conditional. (PM 21)

5. File Symbol: 100-INR. Applicant: Ciba Crop Protection, Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419-8300. Product Name: Mefenoxam EC. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]- propionic acid methyl ester at 48.0%. Proposed Classification/Use: For the control of certain diseases in various crops caused by the Oomycete class of fungi. Type Registration: Conditional. (PM 21)

6. File Symbol: 100-INU. Applicant: Ciba Crop Protection, Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419-8300. Product Name: Mefenoxam/Copper. Fungicide. Active Ingredients: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]- propionic acid methyl ester at 5.0% and Copper Hydroxide at 60.0%. Proposed Classification/Use: For the control of certain diseases in various fruits and vegetables. Type Registration: Conditional. (PM 21)

7. File Symbol: 100-TOA. Applicant: Ciba Crop Protection. Product Name: Mefenoxam MC. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 22.0%. Proposed Classification/Use: For the control of certain diseases in conifers, nonbearing citrus, nonbearing deciduous fruits and nuts, ornamentals, and turf. Type Registration: Conditional. (PM 21)

8. File Symbol: 100-TOE. Applicant: Ciba Crop Protection. Product Name: Mefenoxam PC Granular. Fungicide. Active Ingredients: Pentachloronitrobenzene (PCNB) at 10.0% and Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 0.5%, and Product Name: Twin Pak Mefenoxam PC Liquid. Fungicide. Active Ingredients: Mefenoxam EC; Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 48.0%. PCNB 2-E Liquid Emulsifiable Concentrate; Pentachloronitrobenzene (PCNB) at 24.0%. Proposed Classification/Use: For control of damping-off, seed and seedling rot diseases of cotton. Type Registration: Conditional. (PM 21)

9. File Symbol: 100-TOI. Applicant: Ciba Crop Protection. Product Name: Mefenoxam GR. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 2.50%. Proposed Classification/Use: For control of Phytophthora and Pythium diseases of avocados, citrus, cotton, cranberries, ginseng, leafy vegetables, nonbearing deciduous fruits and nuts, peanuts, raspberries, soybeans, spinach, sugar beets, and tomatoes. Type Registration: Conditional. (PM 21)

10. File Symbol: 100-TOG. Applicant: Ciba Crop Protection. Product Name: Mefenoxam E. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 48.0%. Proposed Classification/Use: For the control of certain diseases in conifers, nonbearing citrus, nonbearing deciduous fruits and nuts, ornamentals, and turf. Type Registration: Conditional. (PM 21)

11. File Symbol: 100-TOL. Applicant: Ciba Crop Protection. Product Name: Mefenoxam WP. Fungicide. Active Ingredient. Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 45.0%. Proposed Classification/Use: For the control of certain diseases in conifers, nonbearing citrus, nonbearing deciduous fruits and nuts, ornamentals, and turf. Type Registration: Conditional. (PM 21)

12. File Symbol: 100-TOO. Applicant: Ciba Crop Protection, Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419-8300. Product Name: Mefenoxam LS. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]- propionic acid methyl ester at 33.3%. Proposed Classification/Use: A seed treatment chemical for the control of Pythium and Phytophthora causing damping-off, seed rot, and systemic downy mildew diseases of certain crops. Type Registration: Conditional. (PM 21)

13. File Symbol: 100-TOT. Applicant: Ciba Crop Protection. Product Name: Mefenoxam 45W. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 45.0%. Proposed Classification/Use: A seed treatment chemical for the control of Pythium and Phytophthora causing damping-off, seed rot, and systemic downy mildew diseases of certain crops. Type Registration: Conditional. (PM 21)

14. File Symbol: 100-TOU. Applicant: Ciba Crop Protection. Product Name: Mefenoxam G. Fungicide. Active Ingredient: Mefenoxam (R,S)-2[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester at 1.0%. Proposed Classification/Use: For the control of certain diseases in ornamentals, turf, nonbearing citrus, conifers, and nonbearing deciduous fruit and nut tree in nurseries. Type Registration: Conditional. (PM 21)

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30403] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, 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.

Written comments filed pursuant to this notice, will be available in the

Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 16, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–4253 Filed 2–26–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

February 20, 1996.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Dorothy Conway, Federal Communications Commission, (202) 418–0217.

Federal Communications Commission

OMB Control No.: 3060–0289.

Expiration Date: 2/28/99.

Title: Performance Tests - Section 76.601.

Estimated Annual Burden: 285,084 hours annual burden; average 19.4 hours per respondent; 14,673 respondents.

Description: Section 76.601 requires that every cable system operator maintain a current listing of the cable television channels which that system delivers to its subscribers. Section 76.601(c) and (d) require cable systems with over 1,000 subscribers to conduct semi-annual proof of performance tests and triennial proof of performance tests for color testing. This collection is being revised to request approval for the third party disclosure in section 76.601(d) requiring local franchise authorities to notify the cable operators who will be allowed third days to come in compliance with any perceived signal quality problems which need to be corrected.

OMB Control No.: 3060–0028.

Expiration Date: 2/28/99.

Title: Application for Authorization in the Auxiliary Broadcast Service.

Form: FCC Form 313.

Estimated Annual Burden: 7,749 total annual hours; average 5.166 hours per respondent; 1,500 respondents.

Description: FCC Form 313 is used by permitees or licensees of AM, FM and TV Broadcast Stations and eligible networks when applying for remote pickup, aural microwave, television microwave, and other auxiliary broadcast stations. Data is used by FCC staff to determine if proposal meets statutory requirements and to ensure that interference will not occur.

OMB Control No.: 3060–0645.

Expiration Date: 2/28/99.

Title: Antenna Registration - Part 17.

Estimated Annual Burden: 40,965 total annual hours; average 1 hour per respondent; 40,965 respondents.

Description: This recordkeeping requirement requires that those licensees who experience problems with the lighting of their antenna structure lighting to keep a record of the malfunction with the station records. This information is used by FCC personnel to ensure that antenna structure lighting systems are properly maintained.

OMB Control No.: 3060–0686.

Expiration Date: 2/28/99.

Title: Streamlining the International Section 214 Authorization Process and Tariff Requirements.

Estimated Annual Burden: 3,448 total annual hours; average 8 hours per respondent; 431 respondents.

Description: This collection contained in an NPRM proposes to Streamline the International Section 214 authorization process and tariff requirements. The proposed rules would greatly reduce the regulatory burden on the applicants, authorized carriers and the Commission. The NPRM proposes to reduce the need for carriers to file multiple applications by enabling a non-dominant carrier to obtain a global 214 authorization, which is not limited to specific carrier facilities, and by eliminating several regulatory requirements that require carriers to file multiple Section 214 applications. The global Section 214 authorization would allow carriers to provide international services on a facilities-basis to virtually all points in the world, using any licensed facility. This authorization would be subject to an exclusion list that the Commission would publish identifying countries or facilities for which there are restrictions. In regard to regulatory requirements being removed, Section 63.01 would be amended to make it applicable only to applicants for domestic Section 214 authority. A new rule is proposed that will detail the application requirements for International Section 214 authority, and include the provisions for filing a global Section 214 application. In addition, the proposed rule will allow resellers to provide international resale services via an authorized common carrier, except those affiliated with the reseller, without obtaining additional authority. Also private line resale carriers would be able to resell interconnected private lines for switched services to all designated ''equivalent'' countries, without obtaining additional authority to serve each equivalent country. Section 63.15 is proposed to be amended to enable carriers to add circuits on private satellite or cable systems, without obtaining prior authority. The NPRM also proposes to simplify the section 214 and cable landing license application process by reducing the detailed information now required in Sections 63.01 and 1.767. The NPRM also proposes to encourage filing of international Section 214 applications electronically and on computer disk and to require that any information contained in the application in a foreign language be accompanied with certified English translation.

The NPRM further reduces filing requirements by allowing dominant carriers to automatically convey transmission capacity in submarine cables to other carriers without obtaining prior Section 214 authority. Also, the NPRM propose to further streamline tariff requirements for non-dominant international resale and facilities-based carriers by permitting them to file their international tariff rates on one day's notice instead of the current 14 day's notice.

OMB Control No.: 3060–0688.

Expiration Date: 2/28/99.

Title: Abbreviated Cost of Service Filing for Cable Network Upgrades.

Form: FCC Form 1235.

Estimated Annual Burden: 47,250 total annual hours; average 20 hours per

cable operator respondents and 10 hours per local franchising authority respondents; 2,100 cable operator and 525 local franchising authority respondents.

Description: Section 76.922(h) enables cable operators in some circumstances to increase rates when undertaking significant network upgrades. This form allows cable operators to justify rate increase related to capital expenditures used to improve services to regulated cable subscribers. Operators wishing to establish a network upgrade rate increase should file the form 1235 following the end of the month in which upgraded cable services become available and are providing benefits to the customers. In addition this form can be filed for pre-approval any time prior to the upgraded services becoming available to the subscribers using projected upgrade costs. If the preapproval option is exercised the operator must file the form again following the end of the month in which upgraded cable services become available and are providing benefits to the customers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–4291 Filed 2–26–96; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License number: 3100
Name: Scott Ming Shin Ho d/b/a OK Forwarding Company
Address: 3819 Snead Ct., Sugarland, TX 77479
Date revoked: January 16, 1996
Reason: Surrendered license voluntarily

License number: 2865
Name: Aces, Ltd.
Address: 237 Albany Street, Boston, MA 02118
Date revoked: February 10, 1996
Reason: Failed to maintain a valid surety bond

License number: 3470
Name: World Port Shipping, Inc.
Address: 19146 South Van Ness Ave., Torrance, CA 90504
Date revoked: February 10, 1996
Reason: Failed to maintain a valid surety bond

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 96–4297 Filed 2–26–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Gregory J. Paetow, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 12, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Gregory J. Paetow, Palos Heights, Illinois; to acquire an additional .98 percent, for a total of 14.72 percent, of the voting shares of Palos Bancshares, Inc., Palos Heights, Illinois, and thereby indirectly acquire Palos Bank and Trust, Palos Heights, Illinois.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Sang Hoon Kim, Los Angeles, California; to acquire an additional .37 percent, for a total of 10.32 percent, of the voting shares of California Center Bank, Los Angeles, California.

Board of Governors of the Federal Reserve System, February 21, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-4334 Filed 2-26-96; 8:45 am]

BILLING CODE 6210-01-F

Capital Corp of the West; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-3226) published on pages 5774 and 5775 of the issue for Wednesday, February 14, 1996.

Under the Federal Reserve Bank of San Francisco heading, the entry for Capital Corp of the West, is revised to read as follows:

1. Capital Corp of the West, Merced, California; to engage *de novo* in furnishing general economic information and advice, general economic statistical forecasting services and industry studies, pursuant to § 225.25 (b)(4)(iv) of the Board's Regulation Y; and in providing advice, including rendering fairness opinions and providing valuation services, in connection with mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings, and financing transactions (including private and public financing and loan syndications); and conducting financial feasibility studies, pursuant to § 225.25 (b)(4)(vi) of the Board's Regulation Y. The geographic scope for these activities will be limited to Arizona, California, Oregon and Nevada.

Comments on this application must be received by February 28, 1996.

Board of Governors of the Federal Reserve System, February 21, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-4333 Filed 2-26-96; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

NAME: Setting a National Occupational Research Agenda: Review of the Draft National Occupational Research Agenda.

TIME AND DATE: 9 a.m.–5 p.m., March 1, 1996.

PLACE: The Watergate Hotel, Chesapeake Room, 2650 Virginia Avenue, NW, Washington, DC 20037.

STATUS: Open to the public, limited only by the space available.

PURPOSE: NIOSH will sponsor a public meeting to review the draft National

Occupational Research Agenda (NORA) and to develop recommendations for implementation of the agenda. Invited participants will form review panels and review the draft NORA in sessions open to the public. A limited amount of time will be reserved to provide members of the public attending the meeting the opportunity to comment on the research priorities and recommendations on implementation. The tentative agenda of the meeting begins with a discussion of the development of the list of research priorities included in the draft NORA. Participants will break into smaller groups to review the draft and make recommendations on implementation of the NORA. In the afternoon session, each Work Group will present a summary of their comments. A limited amount of time will be reserved following the Work Group presentations for public comment and discussion. Three to five minute presentations on the draft NORA may be made during the public session. The exact time limit of the presentations will depend upon the number of people wishing to present. The draft NORA will be available for distribution on February 23, 1996. NIOSH encourages the public to provide comments on research priorities through March 6, 1996. The final NORA will be released on April 29, 1996. To attend this meeting, receive a copy of the draft NORA, or receive additional information on NORA, please contact Mr. Chris Olenec as indicated below. On-site registration will be available; however, to assist in planning for the meeting, advance registration is requested.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mr. Chris Olenec, NIOSH, CDC, 200 Independence Avenue, Room 317B, Washington, DC 20201, telephone 202/205–2640, FAX 202/260–1898. When possible, please FAX requests for copies of the draft research agenda.

WRITTEN COMMENTS TO: Ms. Diane Manning, NIOSH, CDC, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Dated: February 20, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–4337 Filed 2–26–96; 8:45 am]

BILLING CODE 4163–19–M

Food and Drug Administration

Advisory Committee Meeting; Postponement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is postponing the meeting of the Food Advisory Committee scheduled for February 28 and 29, 1996. The meeting was announced by a notice in the Federal Register of February 8, 1996 (61 FR 4783). The Food Advisory Committee will meet in the near future and announce its notice of meeting in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS–5), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4727.

Dated: February 21, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–4348 Filed 2–26–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee Meetings; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing amendments to the notice of meetings of the Antiviral Drugs Advisory Committee, the Endocrinologic and Metabolic Drugs Advisory Committee, and the joint meeting of the Endocrinologic and Metabolic Drugs Advisory Committee and the Antiviral Drugs Advisory Committee. These meetings were announced in the Federal Register of January 31, 1996 (61 FR 3427). The amendments reflect a change in the location of the Antiviral Drugs Advisory Committee meeting on the third day. The 3-day meeting will now be held at the same location. In addition, the location has been changed for the other meetings. There are no other changes. The amendments will be announced at the beginning of the open portion of the meetings.

FOR FURTHER INFORMATION CONTACT:

For the Antiviral Drugs Advisory Committee Meeting: Ermona McGoodwin, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

For both the Endocrinologic and Metabolic Drugs Advisory Committee Meeting and the Joint Meeting of the Endocrinologic and Metabolic Drugs Advisory Committee and the Antiviral Drugs Advisory Committee: Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 31, 1996 (61 FR 3427), FDA announced: (1) A meeting of the Antiviral Drugs Advisory Committee would be held on February 28 and 29, and March 1, 1996; (2) a meeting of the Endocrinologic and Metabolic Drugs Advisory Committee would be held on February 29, 1996; and (3) a joint meeting of the Endocrinologic and Metabolic Drugs Advisory Committee and the Antiviral Drugs Advisory Committee would be held on March 1, 1996. On page 3428, beginning in the second column, the ''*Date, time, and place*'' portion of the Antiviral Drugs Advisory Committee is amended to read as follows:

Date, time, and place. February 28 and 29, and March 1, 1996, 8:30 a.m., Holiday Inn—Gaithersburg, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

On page 3429, in the first column, the ''*Date, time, and place*'' portion of the Endocrinologic and Metabolic Drugs Advisory Committee is amended to read as follows:

Date, time, and place. February 29, 1996, 8 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

On the same page, in the second column, the ''*Date, time, and place*'' portion of the joint meeting of the Endocrinologic and Metabolic Drugs Advisory Committee and the Antiviral Drugs Advisory Committee is amended to read as follows:

Date, time, and place. March 1, 1996, 8 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Dated: February 22, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–4575 Filed 2–23–96; 4:12 pm]

BILLING CODE 4160–01–F

Health Care Financing Administration

[ORD–084–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: December 1995

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: This notice identifies proposals submitted during the month of December 1995 under the authority of section 1115 of the Social Security Act and those 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.)

FOR FURTHER INFORMATION CONTACT: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850. (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.

As part of our established procedures, we normally publish a monthly notice in the Federal Register with a 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. In the month of December we received no new proposals and no changes to pending proposals.

II. New, Pending, Approved, and Withdrawn Proposals for the Month of December 1995

During the month of December 1995 we received no new Comprehensive Health Reform Programs or Other Section 1115 Demonstration Proposals. We did not approve or disapprove any proposals during December 1995 nor were any proposals withdrawn during that month. Pending proposals for the month of November, 1995 published in the Federal Register on January 23, 1996, 61 FR 1769, remain unchanged for the month of December.

III. 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 in the notice published on January 23, 1996. 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: February 20, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 96–4358 Filed 2–26–96; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

''Screening for Alcohol Problems in the Elderly'' Study

Proposed Data Collection

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) is publishing this notice to solicit public comment on the data collection proposed for the study on ''Screening for Alcohol in the Elderly''. To request copies of the data collection plans and instruments, call Dr. Gayle Boyd, (301) 443–8766 (not a toll-free number).

Comments are invited on: (a) whether the proposed collection is necessary, including whether the information has a practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; (d) ways to minimize the collection burden of the respondents. Written comments are requested within 60 days of the publication of this notice. Send comments to Dr. Gayle Boyd, Prevention Research Branch, Division of Clinical and Prevention Research (DCPR), NIAAA, NIH, Building 6000, Room 505, 6000 Executive Boulevard, Bethesda, Maryland 20892–7003.

Proposed Project

The Prevention Research Branch (PRB), intends to conduct the study for ''Screening for Alcohol Problems in the Elderly.'' The PRB is authorized by Section 452 of Part G of Title IV of the Public Health Service Act (42 USC 288) as amended by the NIH Revitalization Act of 1993 (Pub. Law 103–43).

The information proposed for collection will be used by the NIAAA to develop an alcohol problem screening instrument suitable for use with the population age 65 and over and that can be administered in health care settings. The prevalence of alcohol problems among older persons is not well established. The instruments used for assessment are often not sensitive to alcohol abuse and dependence in this population, and many alcohol-related problems go undetected.

The annual burden estimates are as follows:

Type and No. of respondents	Responses per respondent	Total responses	Hours	Total hours
Patients, 500	1	500	.3340	167
Physicians, 136	1	136	.0835	11.4
Total Number of Respondents, 636 (318 per year)				
Total Number of Responses, 636 (318 per year)				
Total Hours, 178.4 (89.2 per year)				

Dated: February 15, 1996.

Martin K. Trusty,

Executive Officer, NIAAA.

[FR Doc. 96–4368 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

Proposed Data Collection Available for Public Comment

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects. To request more information on the proposed project, call Ruth A. Kleinerman, M.P.H., Epidemiologist, at (301) 496–6600.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Ruth A. Kleinerman, M.P.H., National Cancer Institute, EPN 408, 6130 Executive Boulevard, Rockville, MD 20892–7364. Written comments should be received by April 29, 1996.

Proposed Project: Leukemia Among Chernobyl Cleanup Workers—renewal—A cohort study will be conducted to quantify the risk of radiation-induced leukemia and other cancer among 10,000 workers from Latvia and Lithuania who were sent to Chernobyl to cleanup after the reactor accident in 1986. The workers will be asked to respond to a mail questionnaire which collects information about specific duties during the cleanup, incident cancers and risk factors for those cancers to evaluate cancer risk associated with occupational exposure to low-level ionizing radiation, taking into account potentially confounding factors. The information will be used by the National Cancer Institute to determine cancer specific radiation risk estimates. Burden estimates are as follows:

	No. of respondents	No. of responses per respondent	Avg. burden/response
Cleanup Workers	3,300	1	.33 hours.

Dated: February 16, 1996.

Philip D. Amoruso,

NCI Executive Officer.

[FR Doc. 96–4362 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing specialist at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7057; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Azo Dye Derivatives Exhibiting Anti-HIV Activity, Pharmaceutical Compositions Containing the Same and Methods for Using the Same

Haugwitz, R.D., Zalkow, L., Deutsch, H., Gruszecka-Kowalik, E., Asibal, C., Qazi, S. (NCI)
Filed 7 Jun 95
Serial No. 08/479,540 (FWC of 08/167,296)
Licensing Contact: Cindy K. Fuchs, 301/496–7735 ext 232

A method of obtaining substantially pure azo stilbenes offers an important new tool for combating HIV infection. A number of dyes have been shown to have anti-HIV activity; however, it has previously not been possible to purify the anti-HIV components of these compounds. This pure preparation of azo stilbenes have a broad range of antiviral activity, including anti-HIV activity. (portfolio: Infectious Diseases—Therapeutics, antivirals, AIDS)

Amido Substituted Stilbenes and Related Compounds With In Vitro Anti-HIV Activity

Haugwitz, R.D., Zalkow, L., Gruszecka-Kowalik, E., Burgess, E. (NCI)
Filed 17 Feb 95
Serial No. 08/390,057
Licensing Contact: Gloria H. Richmond, 301/496–7056 ext 268

Aroylaniline derivatives which exhibit antiviral activity, methods for synthesizing these compounds, pharmaceutical formulations containing these compounds, and methods for treating viral infection are described in this invention. The aroylaniline derivatives are capable of preventing the replication of virus in a cell, such as human T-cell, without staining the tissue. These compounds may effectively treat viral infections of mammals, particularly human. A main target for these compounds can be treatment against infections caused by retroviruses such as HIV. (portfolio: Infectious Diseases—Therapeutics, antivirals, AIDS)

A Method for Isolating Dendritic Cells

Cohen, P.A., Czerniecki, B.J., Carter, C., Fowler, D.H., Kim, H. (NCI)
Filed 27 Jan 95
Serial No. 08/379,227
Licensing Contact: Stephen Finley, 301/496–7735 ext 215

Antigen presenting cells (APCs) are cells that are involved in the presentation of antigens to the immune system. APCs can stimulate the immune system—T lymphocytes—to fight infections, including HIV and some forms of cancer. A wide variety of cells have the capability to act as APCs, including monocytes, macrophages, B cells, and dendritic cells; however, extensive research has indicated that the most potent antigen presenting cell is the dendritic cells. Previous methods for isolating dendritic cells have relied on either the isolation of bone marrow precursor cells from blood followed by

stimulation to form dendritic cells, or the collection of precommitted cells from peripheral blood. Both of these methods have drawbacks: the necessity to treat the patient with cytokines to increase the number of precursor cells in the blood or techniques that lead to physical trauma of the dendritic cells. This invention embodies a method to isolate dendritic cells from blood in which leukapheresis is employed as a preliminary step to enrich for precursor cells in a patient without the requirement for cytokine treatment followed by countercurrent centrifugal elutriation. The purity of the cells isolated is much greater than any other known method. (portfolio: Central Nervous System—Research Tools and Reagents)

AAMP–1

Beckner, M.E., Liotta, L.A. (NCI)
Filed 25 Jun 93
Serial No. 08/083,945 (CIP of 07/827,043)
Licensing Contact: Susan Rucker, 301/496–7056 ext 245

AAMP–1, a novel protein that has human cell adhesion properties has been characterized. Peptides derived from that protein have been shown to exhibit herparin-binding and cell-adhesive properties. The heparin-binding properties of the peptides may be useful for the treatment of conditions in which the presence or absence of heparin and/or heparin-sulfate needs to be regulated. These conditions could include heparinization to prevent blood clotting and possibly inflammatory, immune, or neoplastic disorders, and wound-healing in human patients. The cell-adhesion properties of the peptides may be useful for mediating cell-cell and cell-substrate adhesion. These properties might be particularly useful for producing materials for use in prosthetic devices-cell adhesion to a prosthetic device could potentially be controlled by regulating the presence or absence of heparin in the bodily system of the patient receiving a prosthetic device made with the peptides. The peptides retain their properties following crystallization, and the crystallized peptides are heat-stable and not inactivated by solvents. The small size and enhanced stability and processability of the crystalline peptides versus the native AAMP–1 protein suggest that the peptides will be more useful therapeutic agents and better raw materials for device fabrication than the native protein. (portfolio: Cancer—Diagnostics, in vitro, other; Cancer—Therapeutics, biological response modifiers)

Vaccine Against Hepatitis A Virus

Purcell, R.H., Ticehurst, J.R., Cohen, J.L., Emerson, S.U., Feinstone, S.M., Daemer, R.J., Gust, I.D. (NCI)
Filed 16 Jan 92
Serial No. 07/822,639 (Reissue of Serial No. 07/217,824; U.S. Patent No. 4,894,228 issued 16 Jan 90)
Licensing Contact: Gloria H. Richmond, 301/496–7056 ext 268

An attenuated hepatitis A virus (HAV) offers an important new tool for the development of a protective vaccine. Previously, immune serum globulin (ISG) is the only effective vaccine for preventing HAV infection; however, ISG elicits only low levels of neutralizing antibodies and, thus, requires repeated doses. This attenuated HAV, which is a mutant of the wild-type strain, elicits serum-neutralizing antibody production in chimpanzees and is suitable for vaccine development. (portfolio: Infectious Diseases—Vaccines, viral, non-AIDS)

Dated: February 20, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–4363 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting

Notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors Cancer Centers Program Working Group, March 12, 1996 at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland.

This meeting will be open to the public on March 12, from 8:30 a.m. to 10:00 a.m. for overview and discussion of the Institute's Cancer Centers Extramural Program.

The meeting will be closed to the public on March 12, from 10:00 a.m. to adjournment for discussion of confidential issues relating to the review, discussion and evaluation of individual programs and projects conducted by the Cancer Centers Extramural Program. These discussions will reveal confidential trade secrets or commercial property such as patentable material, and personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Information pertaining to the meeting may be obtained from Dr. Paulette Gray, Executive Secretary, National Cancer Institute Board of Scientific Advisors, National Cancer Institute, 6130 Executive Blvd., EPN., Rm. 600, Bethesda, MD 20892, (301–496–4218). Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Dr. Paulette Gray in advance of the meeting.

Dated: February 21, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4361 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Subcommittee A—Cancer Centers Subcommittee.

Date: March 28–29, 1996.

Time: 7:30 a.m.

Place: The Holiday Inn, Chevy Chase, Chevy Chase, MD.

Contact Person: David E. Maslow, Ph.D., 6130 Executive Blvd., Room 643A, Bethesda, MD 20892, Telephone: 301–496–2330.

Committee Name: Subcommittee C—Preclinical and Basic Studies.

Date: April 1–3, 1996.

Time: 7:30 a.m.

Place: The Holiday Inn, Georgetown, 2101 Wisconsin Ave., N.W., Washington, D.C. 20007.

Contact Person: Virginia Wray, Ph.D., 6130 Executive Blvd., Room 635D, Bethesda, MD 20892, Telephone: 301–496–9236.

Committee Name: Subcommittee E—Prevention and Control Subcommittee.

Date of Meeting: April 17, 1996.

Time: 8 a.m. to adjournment.

Place of Meeting: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Dr. Sally A. Mulhern, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 643, 6130 Executive Boulevard MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7413.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: February 21, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4360 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Initial Review Group (IRG) meeting:

Name of IRG: Clinical Trials Review Committee.

Date: February 25–27, 1996.

Time: 7:00 p.m.

Place: Hyatt Regency, Bethesda, Maryland.

Contact Person: Dr. David M. Monsees, 6701 Rockledge Drive, Rm. 7178, Bethesda, Maryland 20892, (301) 435–0270.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the partial shutdown of the Federal Government and urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: February 21, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4364 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Mucosal and Synovial Gene Transfer.

Date: March 20–21, 1996.

Time: 9:00 a.m.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, N.W., Washington, DC 20007, (202) 338–4600.

Contact Person: Dr. Madelon C. Halula, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C16, Bethesda, MD 20892, (301) 496–2550.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: February 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4371 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institutes of Deafness and Other Communication Disorders Special Emphasis Panel.

Date: March 14, 1996.

Time: 11:00 a.m.–2:00 p.m.

Place: Room 400C, 6120 Executive Blvd., Rockville, MD 20852 (telephone conference call).

Contact Person: Mary Nekola, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301–496–8683.

Purpose/Agenda: To review and evaluate one program project application. The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: February 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4369 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 13, 1996.

Time: 3 p.m.

Place: Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3367.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: April 15—April 16, 1996.

Time: 7 p.m.

Place: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: William H. Radcliffe, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4367 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting

of the National Institute of Mental Health Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Clinical Centers and Special Projects Review Committee.

Date: March 12–March 13, 1996.

Time: 8:30 a.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4366 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 12, 1996.

Time: 2 p.m.

Place: Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, telephone: 301, 443–3936.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4365 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Drug Abuse (NIDA), on March 5, 1996, at the Division of Intramural Research, Hopkins Bayview Research Campus, Building C, 3rd Floor, 4940 Eastern Avenue, Baltimore, Maryland 21224.

The meeting will be open to the public on March 5 from 8:30 a.m. to 9:25 a.m. for announcements and reports of administrative, legislative, and program developments in the drug abuse field. Attendance will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 5 from 9:25 a.m. to adjournment for the review, discussion, and evaluation of intramural research programs and projects and productivity and performance of individual staff scientists, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–2755).

Substantive program information may be obtained from Mr. Brian Butters, Division of Intramural Research, NIDA, Hopkins Bayview Research Campus, Building C, 3rd Floor, 4940 Eastern Avenue, Baltimore, Maryland 21224 (410/550–1538).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Butters in advance of the meeting.

This notice is being published less than 15 days prior to the above meeting due to the partial shutdown of the Federal Government and the urgent need to meet timing limitations imposed by the review cycle.

Dated: February 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

FR Doc. 96–4359 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants, Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings that are being held to review grant applications:

Study section/contact person	March 1996 meetings	Time	Location
Immunological Sciences Initial Review Group:			
Allergy & Immunology, Dr. Calbert Laing, 301–435–1221.	Mar. 18–19	8:30 a.m.	Holiday Inn, Silver Spring, MD
Musculoskeletal and Dental Sciences Initial Review Group:			
General Medicine A–1, Dr. Harold Davidson, 301–435–1776.	Mar. 10–11	8:30 a.m.	Holiday Inn, Chevy Chase, MD
Sensory Sciences Initial Review Group:			
Visual Sciences B, Dr. Leonard Jakubczak, 301–435–1247.	Mar. 19–20	8:30 a.m.	Holiday Inn, Georgetown, DC

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 20, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–4370 Filed 2–26–96; 8:45 am]

BILLING CODE 4140–01–M

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Notice of Public Hearing on ACIR Preliminary Report, The Role of Federal Mandates in Intergovernmental Relations

SUMMARY: The Advisory Commission on Intergovernmental Relations (ACIR) will hold a public hearing on Friday, March 8, 1996, beginning at 9:00 AM and concluding no later than 4:00 PM in the Jefferson Auditorium, USDA, 14th and Independence Ave., SW, Washington, DC 20250. The purpose of the hearing is to take testimony on the Commission's preliminary report, The Role of Federal Mandates in Intergovernmental Relations.

FOR FURTHER INFORMATION CONTACT: Advisory Commission on Intergovernmental Relations, 800 K Street, NW, Suite 450, South Tower, Washington, DC 20575, Phone: (202) 653–5540/FAX: 653–5429. Internet: ir002529@interramp.com.

SUPPLEMENTARY INFORMATION: As required by Section 302(c)(2), the Advisory Commission on Intergovernmental Relations (ACIR) will hold a public hearing to take testimony on the Commission's preliminary report, The Role of Federal Mandates in Intergovernmental Relations. Copies of the report can be obtained by calling ACIR at (202) 653–5640, faxing a request to (202) 653–5429, or accessing the ACIR Internet home page (www.access.gpo.gov/acir *or* www.access.gpo.gov:80/acir).

The public hearing will be held on March 8, 1996, in the Jefferson Auditorium, US Department of Agriculture (USDA), South Building, 14th and Independence Ave., SW Washington, DC 20250. Persons desiring access to the Jefferson Auditorium should use the Wing 4 entrance to the USDA complex located in the center of the South Building on Independence Ave., SW. Wheelchair access is available at the Wing 1 entrance to the USDA complex on Independence Ave., SW. There is a self-operated lift for wheelchairs next to the steps at the corner of 12th and Independence Ave., SW. For further directions to the USDA complex, please call (202) 653–5912.

The hearing will be conducted beginning at 9:00 AM and concluding no later than 4:00 PM. If all persons desiring to testify cannot be heard during those hours, an additional hearing will be scheduled at a later date. Oral testimony will be limited to 5 minutes per person. Written testimony in lieu of an oral statement and/or to supplement an oral statement will be accepted at the hearing. Individuals who wish to be scheduled in advance to testify should send a written request by mail or fax to: MacArthur C. Jones, ACIR, 800 K Street, NW, Suite 450, South Tower, Washington, DC 20575. The fax number is: (202) 653–5429. In the testimony request, please provide your name, address, telephone and fax or internet number, if available. Also, it would be helpful, if you included information such as the organization being represented and/or the primary topic in the ACIR report upon which you wish to testify. Individuals with special needs (e.g. sign language interpreters for the hearing impaired) are requested to indicate such in their written request to testify. People submitting advance written requests to testify will be scheduled for testimony in order of request receipt.

Dated: February 22, 1996.

William E. Davis,

Executive Director.

[FR Doc. 96–4426 Filed 2–26–96; 8:45 am]

BILLING CODE 5500–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Rare Species of Soldier Meadows for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the threatened desert dace, *Eremichthys acros*, and the category 1 candidate Soldier Meadows cinquefoil, *Potentilla basaltica.* These species are endemic to Soldier Meadows, Humboldt County, Nevada. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before April 29, 1996, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the State Supervisor, Nevada State Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C–125, Reno, Nevada, 89502–5093 (Phone: 702–784–5227). Written comments and materials regarding the plan should be sent to Mr. Carlos H. Mendoza, State Supervisor, at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Selena Werdon at the above address, or telephone 702–784–5227.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for reclassification or delisting, and estimate time and cost for implementing the recovery measures needed

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Desert dace are endemic to Soldier Meadows, located in western Humboldt County, Nevada. The species occupies 10 thermal spring systems and approximately 5 kilometers (3.1 miles) of spring outflow stream habitat. No recent population estimate is available, but the species is considered to be relatively abundant in some spring systems. Threats to the species when listed included habitat modifications due to agricultural diversions, potential geothermal and/or mineral development; and introductions of nonnative fishes; and parasites.

Potential threats include trampling and overgrazing by livestock and wild horses and burros, and increasing recreational use of the species' habitat. Recovery efforts will focus on restoring historical habitat in one spring outflow, monitoring population stability and health, and eliminating threats from ongoing habitat modification and sympatric nonnative species. Habitat for desert dace is currently public land administered by the Bureau of Land Management and private land under a conservation easement.

Soldier Meadows cinquefoil are also endemic to Soldier Meadows, although one additional population occurs in Ash Valley, Lassen County, California. In Soldier Meadows, the species occupies alkali meadow, seep, and marsh habitats bordering thermal springs, outflow streams, and depressions. Soldier Meadows contains 10 subpopulations of the cinquefoil. An estimated 84,650 individual plants are distributed on approximately 28 hectares (69 acres). Threats to the species include habitat modifications due to agricultural diversions, trampling and overgrazing by livestock and wild horses and burros, and recreational use; and competing nonnative plants. Conservation efforts will focus on eliminating threats from ongoing habitat modification and invading nonnative plants, and monitoring population stability and health. Habitat for Soldier Meadows cinquefoil in Soldier Meadows is currently public land administered by the Bureau of Land Management and private land under a conservation easement.

Public Comments Solicited

The Service solicits written comments on the *Recovery Plan for the Rare Species of Soldier Meadows.* All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1553(f).

Dated: February 9, 1996.

Thomas Dwyer,

Acting Regional Director.

[FR Doc. 96–4375 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–55–M

North American Wetlands Conservation Council; Meeting Announcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet on March 13 to review proposals for funding submitted pursuant to the North American Wetlands Conservation Act. Upon completion of the Council's review, proposals will be submitted to the Migratory Bird Conservation Commission with recommendations for funding. The meeting is open to the public.

DATES: March 13, 1996, 9:00 A.M.

ADDRESSES: The meeting will be held in the Washington, D.C., metropolitan area at a location yet to be determined. The North American Wetlands Conservation Council Coordinator is located at Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Byron Kenneth Williams, Coordinator, North American Wetlands Conservation Council, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with the North American Wetlands Conservation Act (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the North American Wetlands Conservation Council is a Federal-State-private body which meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to and final approval by the Migratory Bird Conservation Commission. The Council requires that proposals from State, Federal, and private sponsors contain a minimum of 50 percent non-Federal matching funds.

Dated: February 15, 1996.

John G. Rogers,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 96–4356 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Institute of Gas Technology; Radon Use in Natural Gas to Detect Water-Front Movement in Gas Reservoirs; Research

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with the Institute of Gas Technology (IGT) to conduct research into the use of radon in natural gas to detect water-front movement in gas reservoirs. Any others wishing to pursue the possibility of a CRADA for similar activities should contact the U.S. Geological Survey no later than 30 days from the publication of this notice.

ADDRESSES: Information on the proposed CRADA is available to the public upon request at the following location: U.S. Geological Survey, Water Resources Division, MS 430, 12201 Sunrise Valley Drive, Reston, VA 22092.

FOR FURTHER INFORMATION CONTACT: Thomas F. Kraemer, U.S. Geological Survey, Water Resources Division at the address given above; telephone 703–648–5868; FAX 703–648–5484; email tkraemer@usgs.gov.

R. Hirsch,

Chief Hydrologist.

[FR Doc. 96–4332 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[WO–320–1330–01–24 1A]

OMB Approval Number 1004–0103; Notice of Proposed Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request approval for the collection of information from applicants who apply for purchase of mineral materials from public lands under the 43 CFR 3600 regulations. Respondents supply information as to their identity and address and the location and amount of material desired for purchase. The information enables the authorized officer to identify and communicate with the applicant and to evaluate the effect of the proposal on the environment and land uses and to determine whether or not a mineral material contract may be granted.

DATES: Comments on the proposed information collection must be received by April 29, 1996 to be assured of consideration.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, D.C. 20240.

Comments may be sent via Internet to: WO140@attmail.com. Please include ''ATTN: Patrick Boyd'' and your name and return address in your Internet message. Comments may be hand-delivered to the Bureau of Land Management Administrative Record,

Room 401, 1620 L Street, NW, Washington, DC. Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Durga N. Rimal, (202) 452–0350.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), the BLM is required to provide 60-day notice in the Federal Register concerning a proposed collection of information to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Materials Act of 1947, as amended (30 U.S.C. 601, 602), provides for the disposal of mineral materials such as sand, gravel, and petrified wood from the public lands by sale or free use. Such disposals are made at the discretion of the Secretary of the Interior, consistent with the 43 CFR 3600 regulations. These regulations were last revised in 1983. The methods and information required from the public are still the same.

The information that the regulations require an applicant/permittee to submit will be used by the BLM to determine if the sale of materials is in the public interest, to mitigate environmental impacts of mineral materials development, to get fair market value for the materials sold, and to prevent trespass removal of the materials.

An applicant requesting purchase of mineral materials must submit a written request to the authorized officer. Information requirements are not specified in the regulations but the authorized officer is required to make all sales agreements on contract forms approved by the Director of the BLM. Two forms are used. Form 3600–4 is used when the total sale value is less than $2,000 and full payment is due upon execution of the contract. Form 3600–5 is used for sales of $2,000 or greater and provides for installment payments. Both forms require that the applicants provide their name, address, and authorized signature, and location and amount of material to be purchased. In addition to being necessary for a binding contractual agreement, the information is used by the authorized officer to identify and communicate with the applicant. Without binding contractual agreements, the Government would not be able to require appropriate reclamation of disturbed sites, protect natural resources, and ensure regular payment for mineral materials sold.

The public reporting burden for this entire collection, including the form, is estimated to average one-half hour per response. The respondents are sand, gravel, stone and other mineral materials operators. The number of responses per respondent is one to two per year.

The majority of respondents consist of permittees with small sales contracts, for sales amounting to less than $2,000. Depending on the site and amount of material the authorized officer may require the applicant to provide an outline of a mining and reclamation plan at the time of application, prior to processing of the application (43 CFR 3602.1). However, a majority of sales occur from community pits for which the BLM has already developed a mining and reclamation plan, and there is no burden to the applicant. Estimated average preparation time for completing Form 3600–4 and Form 3600–5 and preparing supporting documents, is about 30 minutes. Actual time varies from 15 minutes (most common) to several days for larger projects. The number of new responses is estimated to be 2,500 per year. The estimated total annual burden on new respondents is collectively 1,250 hours. For sales contracts whose terms exceed one year, the respondents are required to submit annual production reports during the duration of the contract (43 CFR 3610.1–3). The average reporting burden for such respondents is about 30 minutes. The estimated number of respondents with contracts requiring annual production reports is 470 with annual burden collectively estimated to be 235 hours. The regulations allow an applicant to perform sampling and testing of deposits, by obtaining a letter of use authorization from the authorized officer, prior to the issuance of a sales contract or permit (CFR 3602.2). A majority of mineral materials sales are made from known deposits where the applicants perform sampling and testing of deposits, by obtaining a letter of use authorization from the authorized officer, prior to the issuance of a sales contract or permit (CFF 3602.2). A majority of mineral materials sales are made from known deposits where the applicants do not ask for permits for sampling and testing. In an average year only about 100 such authorizations are issued and the permittees are required to submit their findings to the authorized officer. The collective annual burden on respondents is estimated to be 75 hours. The total burden for all respondents would collectively total 1,560 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: February 22, 1996.

Annetta Cheek,

Chief, Regulatory Management.

[FR Doc. 96–4415 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–84–P

[NM–070–06–1050–00]

Notice of Intent To Prepare a Plan Amendment/Environmental Assessment [EA] to the Farmington Resource Management Plan Farmington District, New Mexico, Involving Designating Cultural Areas of Critical Environmental Concern

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a Plan Amendment/EA and invitation for public involvement.

SUMMARY: The Bureau of Land Management (BLM), Farmington District Office is initiating preparation of a Plan Amendment/EA for designation of Cultural Areas of Critical Environmental Concern within the northwest corner of New Mexico. The public is invited to participate in this planning effort with the identification of additional sites, issues and planning criteria.

The planning document will be prepared by an interdisciplinary team of specialists within the Farmington District Office. The Proposed Plan Amendment/EA will be made available to all those on the mailing list.

DATES: Written comments relating to the identification of issues and planning criteria will be accepted through the close of business March 15, 1996.

ADDRESSES: Comments and requests to be included on the mailing list should be sent to: Mike Pool, District Manager; Bureau of Land Management, Farmington District Office: 1235 La Plata Highway, Farmington, New Mexico 87401.

FOR FURTHER INFORMATION CONTACT:

Peggy Gaudy at the address above, or call 505–599–6300.

SUPPLEMENTARY INFORMATION: The proposed Cultural Areas of Critical Environmental Concern to be addressed in the Plan Amendment/EA include archaeological and historic sites of Anasazi, Navajo, and Euro-American culture. Currently identified sites include Chacoan outliers, segments of Chacoan roads, an Anasazi Pueblo I community, Navajo pueblitos, Navajo and Anasazi petroglyphs and pictographs, a Native American traditional use area, historic homesteads, and a historic school.

The issues anticipated to be addressed by this Plan Amendment/EA include safety, resource protection, and management.

The proposed planning criteria include:

1. All proposed actions and alternatives considered must comply with current laws and Federal Regulations.

2. The resource allocations of proposed actions will be made in accordance with the principles of ''multiple use'' as defined in the Federal Land Policy and Management Act of 1976 (FLPMA), Sec. 103(c).

3. The Proposed Plan Amendment/EA will consider the uniqueness of the non-renewable cultural resources located within the Farmington District and management needs to ensure long term protection and preservation of identified resources.

4. This planning process will provide for public involvement including early notice and frequent opportunity for citizens and interested groups and others to participate in and comment on the preparation of the Proposed Plan Amendment/EA and related guidance.

Dated: February 12, 1996.

Mike Pool,

District Manager.

[FR Doc. 96–4372 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–FB–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of the proposed information collection requirement and related explanatory material may be obtained by contacting Dennis C. Jones at 303–231–3046. Comments should be submitted to OMB within 30 days of publication of this notice and should be made directly to the Office of Information and Regulatory Affairs, Attention: Desk Officer for Department of the Interior, telephone (202) 395–7340.

Title: Net Profit Share Payments for Outer Continental Shelf Oil and Gas Leases, 30 CFR 220.

OMB Approval Number: 1010–0073

Abstract: Companies involved in the exploration and development of Outer Continental Shelf oil and gas leases under the Net Profit Share Lease (NPSL) system make net profit share payments rather than royalty payments. To encourage exploration and development of a lease, the NPSL system provides for a sharing, by the lessee and the Government, of the risk involved. The lessee is permitted to deduct allowable costs to determine net profit, and profit share payments are not due until the lease becomes profitable. Lessees are required to maintain an NPSL capital account and to provide annual reports listing costs incurred, credits received, and the balance in the account. Beginning the first month in which production revenues are credit to the capital account, lessees are required to prepare monthly reports showing volume and disposition of oil and gas production, production revenue, all costs and credits to the account, the balance in the account, and the net profit share payment due the Government.

Bureau Form Numbers: None.

Frequency: Annually or monthly.

Description of Respondents: Oil and gas companies.

Annual Responses: 222.

Annual Burden Hours: 3,576.

Bureau Clearance Officer: Arthur Quintana, (703) 787–1101.

Dated: January 16, 1996.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 96–4355 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 17, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by March 13, 1996.

Carol D. Shull,

Keeper of the National Register.

Colorado

Baca County

Stonington First Methodist-Episcopal Church, 48854 Co. Rd. X, Stonington, 96000272

Pueblo County

Temple Emanuel, 1425 N. Grand Ave., Pueblo, 96000273

Rio Grande County

Central School Auditorium and Gymnasium, 612 First Ave., Monte Vista, 96000274

Indiana

Dearborn County

Aurora City Hall, 216 Third St. and 233-237 Main St., Aurora, 96000288

St. John's Lutheran Church and School, 7291 IN 62, Dillsboro vicinity, 96000289

Floyd County

Sweet Gum Stable, 627 W. Main St., New Albany, 96000292

Gibson County

Welborn-Ross House, 542 S. Hart St., Princeton, 96000287

Lake County

Ross, John, Farm, Address Restricted, Leroy vicinity, 96000283

Monroe County

Johnson's Creamery, 400 W. Seventh St., Bloomington, 96000284

Parke County

Wright, Gov. Joseph Albert, House, Billie Creek Village, US 36 E, Rockville vicinity, 96000286

Putnam County

Delta Kappa Epsilon Fraternity House, 620 Anderson St., Greencastle, 96000291

Tippecanoe County

Highland Park Neighborhood Historic District, roughly bounded by Kossuth St., S. 9th St., Cherokee Ave. and 4th St., Lafayette, 96000270

Vigo County

Wilson, Woodrow, Junior High School, 301 S. 25th St., Terre Haute, 96000285

Wabash County

North Manchester Public Library, 204 W. Main St., North Manchester, 96000290

Kentucky

Harlan County

Cumberland Central Business District, roughly bounded by Freeman St., Huff Dr., the Poor Fork of the Cumberland R., Cumberland Ave. and W. Main St., Cumberland, 96000282

Jefferson County

Cumberland, The, 201 York St., Louisville, 96000278

Harig, Koop & Company-Columbia Mantel Company, 845 S. Ninth St., Louisville, 96000279

St. George's Roman Catholic Church and Rectory (Boundary Increase), 1809 Standard Ave., Louisville, 96000293

Kenton County

Bavarian Brewing Company, 522 W. 12th St., Covington, 96000281

Massachusetts

Barnstable County

Falmouth Village Green Historic District, roughly, along Locust, Main, N. Main and Hewins Sts. and Palmer Ave., including also Old Town Cemetery, Falmouth, 96000271

Middlesex County

Randall-Hale Homestead, 6 Sudbury Rd., Stow, 96000277

Montana

Ravalli County

Landram, John A., House (Stevensville MPS) 113 College St., Stevensville, 91000749

Nebraska

Antelope County

Maybury—McPherson House, 502 E. Fourth St., Neligh, 96000280

New Mexico

Colfax County

Columbian School (New Deal in New Mexico MPS) 700 N. 2nd St., Raton, 96000261

Kearny School (New Deal in New Mexico MPS) 800 S. 3rd St., Raton, 96000259

Longfellow School (New Deal in New Mexico MPS) 700 E. 4th St., Raton, 96000262

Raton Armory (New Deal in New Mexico MPS) 901 S. 3rd St., Raton, 96000260

Raton Junior—Senior High School (New Deal in New Mexico MPS) 500 S. 3rd St., Raton, 96000263

Guadalupe County

Park Lake Historic District (New Deal in New Mexico MPS) Jct. of Will Rogers Dr. and Lake Dr., Santa Rosa, 96000267

Harding County

Bueyeros School (New Deal in New Mexico MPS) NM 102, 0.25 mi. W of Bueyeros Church, Bueyeros, 96000265

Quay County

Metropolitan Park Bathhouse and Pool Historic District (New Deal in New Mexico MPS) S Frontage Rd. of I–40, 1.5 mi. W of Tucumcari-W interstate exit, Tucumcari, 96000268

Rio Arriba County

Gonzales, Tomas, House, Co. Rd. 155, 2 mi. E of jct. with US 84, Abiquiu vicinity, 96000258

Sandoval County

Roosevelt School (New Deal in New Mexico MPS) Calle Malinche, Bernalillo, 96000266

Union County

Amistad Gymnasium (New Deal in New Mexico MPS) 0.5 mi. E of NM 402, Amistad, 96000264

Clayton Public Schools Historic District (New Deal in New Mexico MPS) Four blocks in SE Clayton centered on 6th and Cedar Sts., Clayton, 96000269

Texas

Harris County

Stevenson, Joseph R. and Mary M., House, 804 Harold St., Houston, 96000275

Lubbock County

South Overton Residential Historic District, Roughly bounded by Broadway, Ave. Q., 19th St. and University Ave., Lubbock, 96000276

Vermont

Franklin County

St. Albans Town Hall, (Historic Government Buildings MPS), VT 36 (Lake Rd.), St. Albans, 96000257

[FR Doc. 96–4305 Filed 2–26–96; 8:45 am]

BILLING CODE 4310–70–P

Notice of Inventory Completion of Native American Human Remains and Associated Funerary Objects in the Possession of the United States Army Corps of Engineers, Tulsa District, Tulsa, OK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Army Corps of Engineers, Tulsa District, Tulsa, OK.

A detailed inventory and assessment of the human remains and associated funerary objects has been made by Tulsa District professional staff in consultation with the Wichita and Affiliated Tribes, the Comanche Tribe of Oklahoma, the Kiowa Tribe of Oklahoma, and the Apache Tribe of Oklahoma.

In June 1988, these human remains were exposed by shoreline erosion at site 34ST2, Waurika Lake and were subsequently removed from the ground by the Stephens County Sheriff's Department. In September 1988, U.S. Army Corps of Engineers personnel removed the partial remains of one individual from the same site. At this time, the Stephens County Sheriff's Department turned over the human remains recovered in June to the Army Corps of Engineers.

The human remains from site 34ST2 consist of a minimum of three individuals. No known individuals were identified. A total of twenty-eight cultural items were found with the human remains, including grinding stones, pottery fragments, stone tools, and animal bone fragments (bison and deer).

Site 34ST2 has been estimated to date to 500–1500 AD based on diagnostic cultural items including pottery fragments, stone tools, and chipped stone debris discovered adjacent to the burials. The continuity and styles of pottery types and stone tools strongly indicate occupation by the same cultural group throughout this period. These pottery and tool types are consistent with styles used by the Wichita and Affiliated Tribes during the early contact period. Oral history evidence presented by representatives of the Wichita and Affiliated Tribes as well as continued post-contact use and occupancy indicates this area to be well within the traditional use and occupancy area of the Wichita and Affiliated Tribes.

Based on the above mentioned information, officials of the U.S. Army Corps of Engineers, Tulsa District have determined, pursuant to 43 CFR 10 (d)(1), the human remains listed above represent the physical remains of at least three individuals of Native American ancestry. Officials of the U.S. Army Corps of Engineers have also determined that, pursuant to 25 U.S.C. 3001(A) and (B), the objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Army Corps of Engineers have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the human remains and associated funerary objects and the Wichita and Affiliated Tribes of Oklahoma.

This notice has been sent to officials of the Wichita and Affiliated Tribes, the Comanche Tribe of Oklahoma, the Kiowa Tribe of Oklahoma, the Apache Tribe of Oklahoma, and the Caddo Tribe of Oklahoma. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Mr. Robert W. Jobson, NAGPRA Coordinator, Planning Division, USACE, Tulsa District, P.O. Box 61, Tulsa, OK 74121–0061, phone (918) 669–7193 before March 28, 1996.

Repatriation may begin after this date if no additional claimants come forward.

Dated: February 21, 1996

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology and Ethnography Program.

[FR Doc. 96–4319 Filed 2-26-96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the United States Army Corps of Engineers, Tulsa District, Tulsa, OK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Army Corps of Engineers, Tulsa District, Tulsa, OK.

A detailed inventory and assessment of the human remains and associated funerary objects has been made by Tulsa District professional staff in consultation with representatives of the Caddo Tribe of Oklahoma and the Wichita and Affiliated Tribes.

In May and June, 1977, the Mahaffey Site (34CH1) at Hugo Lake, Choctaw County, OK was excavated under COE contract number DACW56–77–C–0129 due to the immediate threat of shoreline erosion exposing the site. Cultural items from this site were curated at the Museum of the Red River, OK, and the human remains were curated at the University of Arkansas. In 1995, the Army Corps of Engineers reunited the human remains and associated funerary objects at the Tulsa Repatriation Facility.

The human remains from Mahaffey Site (34CH1) consist of a minimum of 62 individuals. No known individuals were identified. A total of 1,1787 objects are associated with these individuals, including stone (flakes, tools, implements, and ornaments), ceramic vessels, clay pipes, and animal bone tools.

The Mahaffey Site dates to 500 BC to 1450 AD, based on cultural items found with human remains. The ceramics indicate cultural continuity through this time period, and are consistent later Caddoan ceramics. Consultation evidence presented by representatives of the Caddo Tribe of Oklahoma and the Wichita and Affiliated Tribes indicates this was a Caddoan cemetery area during this period.

Based on the above mentioned information, officials of the U.S. Army Corps of Engineers, Tulsa District have determined, pursuant to 43 CFR 10 (d)(1), the human remains listed above represent the physical remains of at least 62 individuals of Native American ancestry. Officials of the U.S. Army Corps of Engineers have also determined that, pursuant to 25 U.S.C. 3001(A) and (B), the 1,787 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Army Corps of Engineers have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the human remains and associated funerary objects and the Caddo Tribe of Oklahoma.

This notice has been sent to officials of the Caddo Tribe of Oklahoma and the Wichita and Affiliated Tribes of Oklahoma. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Mr. Robert W. Jobson, NAGPRA Coordinator, Planning Division, USACE, Tulsa District, P.O. Box 61, Tulsa, OK 74121–0061, phone (918) 669–7193 before March 28, 1996. Repatriation may begin after this date if no additional claimants come forward.

Dated: February 21, 1996

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology and Ethnography Program.

[FR Doc. 96–4318 Filed 2-26-96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Cheney Cowles Museum, Eastern Washington State Historical Society, Spokane, WA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of an inventory of Native American human remains and associated funerary objects currently in the possession of the Cheney Cowles Museum, Eastern Washington State Historical Society, Spokane, WA.

A detailed inventory and assessment has been made by members of the Cheney Cowles Museum professional staff in consultation with the Spokane Tribe of Indians.

In 1939–1940 during excavations of sites behind the Grand Coulee Dam, the human remains and associated funerary objects were collected from four sites on the north side of the Spokane River. The human remains from sites 8, 48, and 50 represent three individuals. No known individuals were identified. A total of 1,409 objects are associated with these remains including: stone pipe bowls; iron ax heads; bone (implements, elk teeth); shell (abalone, olivella, dentallia); copper (beads, buttons, pendants); glass beads; copper beads, discs, and ornaments; twined bag and basketry fragments; hide fragments; a stone pestle; and bark matting. A total of 320 objects were excavated from two burials at Site 51 including copper (button, pendant, beads), an iron ax head, and shell (dentallia). The condition of the excavation reports for site 51 has made it impossible to determine whether the human remains were removed, and no human remains from site 51 have been located in the collections. Sites 8, 48, 50, and 51 have been identified to recent pre-contact through the mid-nineteenth century by the cultural items found with the human remains.

The location of these sites, north of the Spokane River and east of the Columbia River, is well within the exclusive traditional occupation area of the Spokane Tribe during the pre-contact era and is now tribal land within the exterior boundaries of the Spokane Reservation. The basketry fragments have identical construction as historic and present-day Spokane basketry techniques. Representatives and elders of the Spokane Tribe have indicated the manner of the interments is consistent with Spokane traditional practice. Representatives and elders of the Spokane Tribe affirms that Spokane burials are known to have existed along this particular portion of the Spokane River.

Based on the above mentioned information, officials of the Cheney Cowles Museum have determined that, pursuant to 43 CFR 10 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the Cheney Cowles Museum have also determined that, pursuant to 25 U.S.C. 3001(3)(A) and (B), the 1,409 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Cheney Cowles Museum have determined that, pursuant to 25 U.S.C.

3001(2), there is a relationship of shared group identity which can be reasonably traced between the human remains and funerary objects and the Spokane Tribe of Indians.

This notice has been sent to the Spokane Tribe of Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and funerary objects should contact Mr. Glenn Mason, Director, Cheney Cowles Museum, 2316 W. First Avenue, Spokane, WA 99204, telephone (509) 456–4931 ext. 104 before March 28, 1996 Repatriation of the human remains and associated funerary objects may begin after that date if no additional claimants come forward.

Dated: February 21, 1996

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology and Ethnography Program.

[FR Doc. 96–4320 Filed 2-26-96; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL DEVELOPMENT CORPORATION AGENCY

Agency for International Development

Voluntary Foreign Aid Advisory Committee; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: March 12, 1996 (9:00 a.m. to 5:00 p.m.)

Location: State Department, Loy Henderson Auditorium, 23rd Street Entrance

The purposes of the meeting are: to review the impact of the budget cuts on the USAID/PVO partnership, to discuss the findings and recommendations of the USAID agency-wide study on women and development, and to consult with representatives of multilateral development banks on their policies and procedures for working with the nongovernmental sector.

The meeting is free and open to the public. However, notification by March 8, 1996, through the advisory committee headquarters is required. Persons wishing to attend the meeting must call Lisa J. Douglas (703) 351–0243 or Susan Saragi (703) 351–0244 or FAX (703) 351–0228/0212. Persons attending must include their name, organization, birthdate and social security number for security purposes.

Dated: February 15, 1996

John P. Grant,

Director, Office of Private and Voluntary Cooperation, Bureau for Humanitarian Response.

[FR Doc. 96–4317 Filed 2–26–96; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Discretionary Grant Program Awarded by the Office for Victims of Crime for Fiscal Year 1996

AGENCY: Office for Victims of Crime (OVC).

ACTION: Public announcement of availability of the funds under the Discretionary Grant Program authorized by the Victims of Crime Act (VOCA) of 1984 codified at 42 U.S.C. § 10601, *et seq.*

SUMMARY: OVC is publishing this notice to announce the availability of discretionary funding for a training and technical assistance project to improve services to child and adult victims of sexual assault and abuse.

DATES: The deadline for receipt of applications is March 22, 1996.

ADDRESSES: Mail applications to OVC, 633 Indiana Avenue, N.W., Washington, D.C., 20531. Hand delivered applications must be taken to OVC, 1301 Pennsylvania Avenue, N.W., Suite 200, Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Melanie Smith, Program Specialist, (202) 616–1860.

I. Introduction

The Office for Victims of Crime (OVC) is a component of the Office of Justice Programs within the U.S. Department of Justice. It serves as the chief advocate within the Department for all crime victim issues. In addition to ensuring that the criminal justice system addresses the victim's legitimate rights and interests, OVC's program activities include providing victim assistance and compensation grants to the states; training and technical assistance; and emergency services to victims of federal crimes. *See* 42 U.S.C.A. §§ 10601–10605.

II. Program Description

Promising Strategies and Practices for Evidentiary Medical Examinations, Including the Use of Nurse Examiners and Special Settings (Cooperative Agreement).

Award Amount: $50,000.

Purpose: To encourage the participation of child and adult victims of sexual assault and abuse in the criminal justice process by promoting victim-sensitive practices and settings for the collection of medical evidence.

Background: In many places, adult and child victims of sexual assault and abuse who arrive at hospital emergency rooms often have to contend with a lack of privacy, long waits for doctors who are busy attending to other medical emergencies, a lack of emotional support throughout the forensic examination process, and an impersonal, chaotic environment. These conditions not only compound the trauma experienced by victims, but discourage many victims from coming forward to report the crime or to obtain necessary assistance and medical services. In addition, evidence that is poorly collected and improperly preserved undermines efforts to successfully prosecute and convict sex offenders.

To address these issues, some jurisdictions have developed sexual assault nurse examiner programs, in which nurses who are specially trained to address the medical and emotional needs of victims perform the examinations in a setting especially designed for victims. The intent of these programs is to free doctors to attend to other medical emergencies; to use consistent forensic examination practices to ensure that appropriate steps are followed in collecting, handling, and storing evidence; and, most importantly, to assist child and adult victims in a compassionate and sensitive manner. Various communities have also found that examination rooms designed for victims seem to increase their willingness to participate in the criminal justice process. In addition, they have found that the use of trained nurse examiners can reduce costs and enhance the provision of services. These innovative measures not only reduce trauma to victims; they also result in credible evidence, the basis for successfully prosecuting and convicting sex offenders.

Goals

- To promote the use of sexual assault nurse examiner programs and special settings for evidentiary medical examinations of child and adult victim of sexual assault and abuse.
- To define standards for consistent, compassionate and quality practices in conducting evidentiary medical examinations of child and adult victims of sexual assault and abuse.

Objectives

- To conduct a national scope survey and assessment of promising policies, procedures, and training materials used by sexual assault nurse examiner and other non-emergency room programs serving victims of sexual assault and abuse;
- To identify and assess the components of special medical settings for evidentiary exams, including clinics or examining rooms, to include a focus area on their utility in meeting the unique needs of child victims;
- To identify competent, experienced sexual assault nurse examiners for training and program replication purposes; and
- To produce a complete guidebook on the implementation and operation of sexual assault nurse examiner programs and special settings for evidentiary medical examinations.

Program Strategy: This solicitation invites applicants to develop a guidebook on how to implement and operate nurse examiners programs for child and adult victims of sexual assault and abuse, and how to establish special settings designed for evidentiary examinations. The program will comprise three phases:

1. Assessment

This phase entails the identification and assessment of materials describing or being used by sexual assault nurse examiner programs. As part of the assessment phase, the grantee will convene an advisory committee with national-scope representation from the following fields: a practitioner and administrator of a nurse examiner program; victim assistance/advocacy; child protective services; medicine; mental health; law enforcement; and prosecution; and the judiciary; and other appropriate representatives. The advisory board will assist in developing criteria for assessing promising practices, reviewing and rating collected materials, and creating a dissemination plan for getting the materials to practitioners, medical facilities, national organizations, colleges and universities and other entities that can use the information to improve evidence collection and victim assistance practices and procedures. The activities to be completed during this phase are:

- Establishment of the advisory committee with OVC review and approval;
- Development and submission, for OVC review and approval, of a plan and criteria for surveying and assessing sexual assault nurse examiner programs and the use of victim-sensitive settings for the collection of medical evidence;
- A national-scope survey and review of literature, policies, procedures and practices for sexual assault nurse examiner programs and the use of special settings;
- Identification and description of model programs nationwide; and
- Preparation of an assessment report of findings.

2. Development of Prototype

Upon completion of the first phase, the grantee will, in collaboration with its advisory committee, develop a model program brief for implementing and operating a sexual assault nurse examiner program and for establishing special settings for expert medical examinations. The brief will highlight essential components of nurse examiner programs, as well as optional or adaptable elements from model programs around the nation. Particular attention shall be given to issues such as training and credentialing of nurse examiners, as well as qualifying nurses to testify in court. The brief will also describe examples of special settings used for evidentiary medical examinations of child and adult sexual assault and abuse victims. The activities for this phase are:

- Development and drafting of model program elements;
- Highlighting of model programs identified by the survey; and
- Review and refinement of draft product by project staff and advisory committee for OVC review and approval.

3. Finalization of Products

Upon completion of the second phase, the grantee will produce the guidebook and other project products. The activities for this phase are:

- Development and draft of guidebook incorporating the model program brief, accompanying instructions on implementing and operating a sexual assault nurse examiner program, and discussions of special settings and unique concerns of child victims;
- Review and refinement of draft;
- A dissemination strategy identifying potential and appropriate recipients of the guidebook;
- Identification, in list form with supporting vitae, of training and technical assistance staff;
- Preparation of a final report on the project; and
- Preparation of an OVC Bulletin summarizing the project's findings.

Eligibility Requirements: In addition to the requirements of Sections VI-XI, applicants must demonstrate:

- Expert knowledge of trauma experienced by child and adult victims of sexual assault and abuse;
- Active liaison with national scope nursing and/or victim advocacy associations;
- Capability to conduct a national scope information search;
- Knowledge of issues associated with the criminal justice system's handling of crime victims and, more specifically, service provision to child and adult victims of sexual assault and abuse; and
- Management and financial capability to oversee a project of this size and scope.

Award Period: 12 months.

Contact: Melanie Smith, (202) 616–3575.

VI. Eligibility Requirements

In addition to special eligibility requirement listed within the individual program descriptions above, the following will apply. Applications are invited from public and private non-profit agencies and organizations. Applicants must demonstrate that they have ample expertise and/or prior experience in the design and conduct of projects of a nature similar to that for which they are applying.

Applicants must also demonstrate that they have the management capability, fiscal integrity, and financial responsibility, including, but not limited to, an acceptable accounting system and internal controls, and compliance with grant fiscal requirements. Applicants who fail to demonstrate that they have the capability to manage the program will be ineligible for funding consideration.

VII. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424 and OJP Form 4000/3 (1/93) Attachment to SF–424), including a program narrative. All applications must include the information outlined in this section of the solicitation (Section VI, Application Requirements) in Part IV, Program Narrative of the application (SF–424). The program narrative of the application must not exceed 35 double-spaced pages in length. Applicants that fail to adhere to this program requirement will be automatically disqualified from competition.

In accordance with Executive Order No. 12549, 28 C.F.R. 67.510, applications must also provide Certifications Regarding Lobbying, Debarment, Suspension, and other Responsibility Matters; and Drug-Free Workplace Requirements (OJP Form

4061/6), which will be supplied with the application package, and must be submitted with the application.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $100,000. Financial questionnaires must be completed by new non-governmental (except public colleges, universities, and hospitals) applicants. This includes a review of the accounting system and a determination that periodic audits are performed to ensure fiscal integrity. New or supplemental awards may not be made to applicants with delinquent financial or progress reports, delinquent or unresolved audit reports, delinquent federal debts, other unresolved issues of fiscal integrity, or to applicants who have been debarred or suspended from federal financial and non-financial assistance and benefits under federal programs and activities.

Where indicated, cooperative agreements are awarded to states, units of local government, or public or private non-profit organizations at the discretion of OVC. Cooperative agreements are used when substantial involvement is anticipated between OVC and the recipient during performance of the contemplated activity. Interagency agreements between OVC and other governmental units or agencies are negotiated by the entities involved.

The following information must be included in the application (SF–424) Part IV Program Narrative:

A. Organizational Capability

Applicants must demonstrate that they are eligible to compete for a grant on the basis of the eligibility criteria established in Section VI of this solicitation. Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in each program description listed above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of the initiative for which they are applying. Applicants are invited to append examples of prior work products of a similar nature to their application.

Applicants must demonstrate that their organization has or can establish fiscal controls and accounting procedures that assure that federal funds available under this agreement are disbursed and accounted for properly. Non-profit applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Programs Accounting System and Financial Capability Questionnaire (OJP Form 7120/1). Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. The CPA certification (Section H) is required only of those non-profit applicants who have not previously received federal funding.

B. Program Goals and Objectives

A brief statement of the applicant's understanding of the goals and objectives of the program should be included. The application should also include a problem statement and a discussion of the potential contribution of this program to the field.

C. Program Strategy

Applicants should describe the proposed approach for achieving the goals and objectives of each program. A detailed description of how the activities and projects of each program would be accomplished should be included.

D. Program Implementation Plan

Applicants should prepare a plan that outlines the major activities involved in implementing the program, describe how they will allocate available resources to implement the project, and also describe how the program will be managed.

The plan must also include an organizational chart depicting the roles and describing the responsibilities of key organizational and functional components and a list of key personnel responsible for managing and implementing the major stages of the project. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. This documentation and individual resumes may be submitted as appendices to the application.

E. Time-Task Plan

Applicants must develop a time-task plan for the duration of the project periods, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the activities and products. Applicants should also indicate the anticipated cost schedule per month for the entire project period.

F. Products

Applicants must describe concisely the interim and final products of each stage of the program.

G. Program Budget

Budgets must be accompanied by a detailed justification for all costs, including the basis for computation of these costs. Applications containing contract(s) must include detailed budgets for each organization's expenses.

H. Assessment

Each grant recipient will be required to submit formal findings from an assessment, within 60 days of the completion of each year's activities and within 90 days of project completion. Each application must provide a plan for assessing the project.

VIII. Procedures for Selection

All applications will be evaluated and rated based on the extent to which they meet the established weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements set forth in Section VII. Applications will be evaluated by a peer review panel according to the OVC Competition and Peer Review Guidance.

Applications submitted in response to the competitive announcements will be evaluated by a peer review panel. The results of the peer review will be a relative aggregate ranking of applications in the form of ''Summary of Ratings.'' These ordinarily will be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist OVC in considering competing applications and in selection of the application for funding. The final award decision will be made by the OVC Director.

Applications for each program description, except where other point values or categories have been specifically identified, will be evaluated and rated by the peer review panels based on the extent to which they meet the following criteria:

A. Utility of the Project (10 points)

This refers to the applicant's response to the stated project purpose, goals, and objectives, and the applicant's explanation of the usefulness of the project to the field.

B. Project Strategy/Design (30 points)

This provides a description of project components and activities; a specific plan for how the grant applicant intends to achieve the purpose, goals and objectives of the funded program. The strategy or design must include clear

descriptions of interim deliverables and final products.

C. Implementation Plan (10 points)

This plan will be judged on the realistic identification of tasks according to increments in the project period, and the assignment of specific staff to tasks on the time-task line.

D. Organizational Capability (30 points)

Points will be awarded based on the applicant's statement of the organization's capability to successfully undertake this federally funded project. This will consist of two parts: (1) a specific description of the applicant's management structure, previous experience with similar or related efforts, and financial capability (15 points); and (2) a project management plan and documentation of the professional staff members' unique qualifications to perform their assigned tasks (15 points).

E. Budget (15 points)

Points will be awarded based on the enumeration and accompanying narrative of grant costs, to be evaluated for clarity, reasonableness, allowability, and cost effectiveness.

F. A Plan To Assess the Project's Accomplishments (5 points)

This assigns points based on the grant applicant's plan for assessing the impact of the project in accomplishing its goal(s).

IX. Submission Requirements

All applicants responding to this solicitation are subjected to the following requirements:

(1) Upon request to OVC, the necessary forms for application will be provided, along with Department of Justice certification information.

(2) Applicants must submit the original signed application (Standard Form 424) and two copies to OVC. Applications should not be bound. Applicants should also include Certifications Regarding Lobbying; Debarment; Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements (Form 4061/6), in order to meet the requirements of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D) and the Disclosure of Lobbying Activities Form (SF LLL) in accordance with 31 U.S.C. § 1352.

(3) All applications must be received by mail or hand delivered to OVC by 5 p.m. Eastern Time by March 22, 1996. Those applications sent by mail should be addressed to: Office for Victims of Crime, U.S. Department of Justice, 633 Indiana Avenue, N.W., Washington D.C. 20531, ATTN: Administrative Officer. Hand-delivered applications must be taken to OVC, 1301 Pennsylvania Avenue N.W., Suite 200, Washington, D.C. 20006, between the hours of 8 a.m. and 5 p.m. except weekends or federal holidays. Applications must be received by 5 p.m. on the established deadline date. Postmarks WILL NOT be accepted.

OVC will notify applicants in writing of the receipt of their application. Applicants also will be notified by letters as to the decision made regarding whether or not their submission will be recommended for funding. Applications will be reviewed as Peer Review Panels can be convened. Every effort will be made to review applications in a timely manner.

X. Civil Rights Compliance

A. All recipients of Crime Victims Fund assistance, including contractors, must provide Certified Assurances that they are in compliance with the non-discrimination requirements of the Victims of Crime Act of 1984, as amended, which states: No person shall on the ground of race, color, religion, national origin, [disability], or sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any undertaking funded in whole or in part with sums made available under this chapter.

42 U.S.C. § 10604.

Recipients also must assure compliance with the following additional statutes and regulations: Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Subtitle A, Title II of the Americans With Disabilities Act of 1990, codified at 42 U.S.C. § 12101, *et seq.*; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681–1683; the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, *et seq.*; and Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, subparts C, D, E, and G.

B. In the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

XI. Audit Requirements

An audit is required for agencies receiving federal funds, with some exceptions. The purpose of an audit is to determine whether federal funds are being used properly and effectively. Each funded agency must provide the name of the federal cognizant agency where their audit report is submitted. In most cases, the agency that receives an applicant's audit is the agency that provides the most direct funds to applicant during the current fiscal year. If you do not know the name of the cognizant agency, please check with your budget office. More detailed information on audit requirements are listed in the Office of Justice Programs Guideline Manual, Financial and Administrative Guide for Grants, May 15, 1990.

XII. Catalog of Federal Domestic Assistance Numbers

16.582 Crime victim assistance/discretionary grants
16.583 Children's Justice Act for Native American Indian Tribes

Aileen Adams,

Director.

[FR Doc. 96–4321 Filed 2–26–96; 8:45 am]

BILLING CODE 4410–18–P

Bureau of Justice Statistics

Notice of Information Collection Under Review

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register and allowed 60 days for the public to comment.

The purpose of this notice is to allow an additional 30 days for public comment from the date listed at the top of this page in the Federal Register. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. If you have additional comments or suggestions, please include them with your written response. If a copy of the proposed collection instrument with instructions is not published in this notice please contact the agency representative listed below if you wish to receive a copy: Ms. Caroline Wolf Harlow, Room 1009, Bureau of Justice Statistics, Indiana Building, 633 Indiana Avenue NW., Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) Title of the Form/Collection: Survey of Inmates in State Correctional Facilities, 1996–1997. Survey of Inmates in Federal Correctional Facilities, 1996–1997.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: NPS–12, 13, 14, 24, 25, 26, 27, and 32. Bureau of Justice Statistics, United States Department of Justice.

(4) Who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. Other: State, Local or Tribal Government. This survey will be used to profile State and Federal prison inmates nationwide; to determine trends in inmate composition, criminal history and alcohol and drug use; and gun use and crime; and to report on the victims of crime. The data will be used by BJS, Congress, the Executive Office of the President, researchers, practitioners, and others in the criminal justice community. No other collection series provides these data.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 19,428 respondents at 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 19,428 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: February 21, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–4340 Filed 2–26–96; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–016]

NASA Advisory Council; Renewal of the NASA Advisory Council and Related Committees

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of renewal of the NASA Advisory Council and related committees.

SUMMARY: Pursuant to section 14(b)(1) of the Federal Advisory Committee Act, Public Law 92–463, as amended, and after consultation with the Committee Management Secretariat, General Services Administration, the National Aeronautics and Space Administration has determined that the renewal of the NASA Advisory Council and its committees is in the public interest in connection with the performance of duties imposed upon NASA by law.

The following advisory committees are being renewed:

—NASA Advisory Council

—Advisory Committee on the International Space Station

—Aeronautics Advisory Committee

—Earth Systems Science and Applications Advisory Committee

—Life and Microgravity Sciences and Applications Advisory Committee

—Minority Business Resource Advisory Committee

—Space Science Advisory Committee

—Technology and Commercialization Advisory Committee

FOR FURTHER INFORMATION CONTACT: Ms. Anne L. Accola, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0682.

SUPPLEMENTARY INFORMATION: The function of the Council is to consult with and advise the NASA Administrator or designee with respect to plans for, work in progress on, and accomplishments of NASA's aeronautics and space programs.

Dated: February 21, 1996.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–4315 Filed 2–26–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee; Meeting

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

SUMMARY: A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Thursday, March 21, 1996 from 9:00 a.m. to 4:30 p.m. The meeting will be held at the Federal Emergency Management Agency Headquarters, 500 C Street, SW, Washington, DC. The agenda is as follows:

—Opening/Administrative Remarks

—Review Action Items from September meeting

—TSP Program Office Activities

—FEMA Sponsorship of State and Local TSP Requests

—TSP National Information Infrastructure Issue Working Group

—Cellular Priority Access Service Update

—TSP System Oversight Committee Charter

—TSP and the Defense Information System Network

—Old Business/New Business

Anyone interested in attending or presenting additional information to the Committee, please contact LCDR Angela Abrahamson, Manager, TSP Program Office, (703) 607–4930, or Betty Hoskin, (703) 607–4932 by March 15, 1996.

Dennis Bodson,

Chief, Technology and Standards.

[FR Doc. 96–4344 Filed 2–26–96; 8:45 am]

BILLING CODE 5000–03–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 AND 50–374]

Commonwealth Edison Co.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of amendments to Facility Operating License Nos. NPF–11 and NPF–18 issued to Commonwealth Edison Company (ComEd, the licensee) for operation of the LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois.

The proposed amendment would change the setpoints for the automatic primary containment isolation signal upon detection of a high main steamline tunnel differential temperature. Additionally, the proposed amendments would delete the automatic isolation function upon detection of a high main steamline tunnel temperature. Both these temperature generated signals detect possible steam leaks in the main steamline tunnel and initiate the isolation signals cited above, thereby providing automatic closure of the main steamline isolation valves (MSIVs) and the main steamline drain isolation valves. The intent of the proposed actions is to minimize spurious isolation signals which, in turn, would trip the reactor. The licensee proposes to provide for early detection of a main steamline break by relying on an automatic isolation signal which would be generated by a main steamline leak of 100 gallons per minute (gpm) or greater. The current isolation setpoints are based on a steam leakage of 25 gpm in the main steamline tunnel.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

a. There is no effect on accident initiators so there is no change in probability of an accident. The accident analysis associated with a steam line break in the main steam line tunnel assumes an instantaneous circumferential break of a main steam line downstream of the outermost isolation valve. The leak detection isolation on differential temperature based on less than or equal to 10 percent of a calculated critical crack of a main steam line is only a precursor of a break, and thus does not affect the probability of a break.

b. There is no or minimal effect on the consequences of analyzed accidents due to deletion of the automatic isolation on high temperature leak detection in the main steam line tunnel or due to increasing the leak detection differential temperature setpoint and allowable values to detect a 100 gpm steam leak from a crack in a main steam line. The worst case accident corresponding to main steam lines outside of the reactor vessel and primary containment boundary is a main steam line break, which bounds the dose consequences of any size steam leak less than a full break. Also, a 200 gpm steam leak results in a calculated offsite dose within the annual whole body dose limit and the radioiodine release limit per 10 CFR 50 Appendix I, if detected and isolated within several weeks.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The purpose of the main steam line isolation is based on leak detection and automatic isolation for leakage in the main steam line tunnel downstream of the outermost isolation valve. This change maintains this capability with only the leak detection based on high differential temperature in the steam line tunnel. Also, the primary containment isolation logic for main steam line leak detection isolation on high differential temperature remains the same. Thus no new or different accident is created.

(3) Involve a significant reduction in the margin of safety because:

The increased setpoint for differential temperature leak detection for automatic isolation of the main steam lines due to a steam leak outside of the primary containment is based on calculated/analyzed response to a steam leak [that is] small compared to the leak from a critical crack. The leak detection isolation logic remains single failure proof. The previous evaluation of diversity of isolation parameters considered the ambient temperature and differential temperature isolations as one parameter in Table 5.2–8 of the LaSalle [Updated Final Safety Analysis Report] UFSAR. The deletion of leak detection isolation of the main steam lines based on high ambient temperature in the main steam line tunnel is acceptable, because the differential temperature isolation has been analyzed to detect and isolate the main steam lines based on bounding inlet air temperatures. Therefore, the Main Steam Line High flow, vessel low level, and the differential temperature instruments maintain adequate diversity of isolation parameters without main steam line tunnel high temperature.

The differential temperature leak detection for the main steam line tunnel depends on normal ventilation flow to detect leakage. Therefore, the trip function will be declared inoperable upon loss of or shutdown of normal ventilation. The Technical Specifications currently allow the main steam tunnel high temperature and high differential temperature isolation channels to be inoperable for up to 4 or 12 hours during the performance of specified required surveillances. The 12 hours allowed outage time is currently for an 18 month surveillance requirement. The addition of allowance for up to 12 hours allowed outage time to recover normal ventilation following an unplanned loss of normal ventilation is reasonable, since the time is small compared to the time frame over which a pipe crack grows. Also, supplemental monitoring of water collection sumps and area temperature in the main steam line tunnel provides heightened awareness of operators to detect leakage in the main steam line tunnel during the time normal ventilation is not available. The planned shutdown of normal ventilation is currently allowed for up to 4 hours by the Technical Specifications. The unplanned loss of normal ventilation is expected to be less than two times per cycle upon completion [of] design changes to make the isolation logic power supply D.C. instead of A.C. through motor generator sets.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S.

Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 28, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 18, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 21st day of February 1996.

For the Nuclear Regulatory Commission.

M. David Lynch,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–4343 Filed 2–26–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Intention To Request Review of an Expiring Information Collection; SF 2823

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for a clearance of an expiring information collection. SF 2823, Designation of Beneficiary for Federal Employees Group Life Insurance, is used by any Federal employee or retiree covered by the Federal Employees Group Life Insurance Program to instruct how to distribute the proceeds of his or her life insurance when the statutory order of precedence does not meet his or her needs.

We estimate 1,000 SF 2823 forms are completed annually. Each form takes approximately 15 minutes to complete for an annual estimated burden of 250 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-Mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received by no later than April 29, 1996.

ADDRESS: Send or deliver comments to Kenneth H. Glass, Chief, Insurance Operations Division, Retirement and Insurance Service, 1900 E Street NW., Room 3415, Washington, DC 20415–0001.

FOR FURTHER INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Team Leader, Management Services Division, (202) 606–0623.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–4374 Filed 2–26–96; 8:45 am]

BILLING CODE 6325–01–M

PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERAN'S ILLNESSES

Meeting

AGENCY: Presidential Advisory Committee on Gulf War Veteran's Illnesses.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act, this notice is hereby given to announce an open meeting of the Presidential Advisory Committee on Gulf War Veterans' Illnesses.

DATE: March 26, 1996, 8:30 a.m.–5:00 p.m.

PLACE: Omni Parker House Hotel, 60 School Street, Boston, MA 02108.

SUPPLEMENTARY INFORMATION: The President established the Presidential Advisory Committee on Gulf War Veterans' Illnesses by Executive Order 12961, May 26, 1995. The purpose of this committee is to review and provide recommendations on the full range of government activities associated with Gulf War veterans' illnesses. The committee reports to the President through the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs. The committee members have expertise relevant to the functions of the committee and are appointed by the President from non-Federal sectors.

Tentative Agenda

Tuesday, March 26, 1996

8:30 a.m. Call to order and opening remarks
8:35 a.m. Followup on clinical syndromes panel meeting
9:15 a.m. Public comment
10:15 a.m. Break
10:30 a.m. Public comment (cont.)
11:30 a.m. Briefing and discussion: Research on environmental health hazards and the Gulf War
12:30 p.m. Lunch
1:30 p.m. Briefings and discussion: Research on environmental health hazards and the Gulf War (cont).
3:30 p.m. Break
3:45 p.m. Briefing and discussion: Outreach
4:40 p.m. Committee and staff discussion: Next steps
5:00 p.m. Meeting adjourned

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Members of the public who wish to make oral statements should contact the Advisory Committee at the address or telephone number listed below at least five business days prior to the meeting. Reasonable provisions will be made to include on the agenda presentations from individuals who have not yet had an opportunity to address the Advisory Committee. Priority will be given to Gulf War veterans and their families. The Advisory Committee Chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. People who wish to file written statements with the Advisory Committee may do so any time.

FOR FURTHER INFORMATION CONTACT: Miles W. Ewing, Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, N.W., suite 1000, Washington, DC 20005, Telephone: (202) 761–0066, Fax: (202) 761–0310.

Dated: February 21, 1996.

C.A. Bock,

Federal Register Liaison Officer, Presidential Advisory Committee on Gulf War Veterans' Illnesses.

[FR Doc. 96–4292 Filed 2–26–96; 8:45 am]

BILLING CODE 3610–76–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 31a–2—SEC File No. 270–174—OMB Control No. 3235–0179
Rule 7d–1—SEC File No. 270–176—OMB Control No. 3235–0311
Form N–14—SEC File No. 270–297—OMB Control No. 3235–0336

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for approval of extension on the following rules and form:

Rule 31a–2 concerns preservation of records by registered investment companies and certain majority-owned subsidiaries thereof. The Commission periodically inspects the operations of all registered investment companies to ensure their compliance with the provisions of the Investment Company Act of 1940 (''the Act'') and the rules thereunder. A significant portion of the time used in these inspections is spent reviewing the information contained in the books and records required to be preserved by Rule 31a–2. Each of the 4,902 respondents incur an average estimated 15.4 burden hours annually to comply with this requirement.

Rule 7d–1 specifies conditions under which a Canadian (or other foreign) management investment company may request an order from the Commission

permitting it to register under the Act. The rule's information collection requirements seek to ensure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the company's shareholders or the Commission.

The Commission believes that three Canadian investment companies and one other foreign investment company have registered under Rule 7d–1 and are currently active. Apart from information collection requirements imposed on all registered investment companies (which are reflected in the information collection burdens applicable to those requirements), Rule 7d–1 imposes ongoing burdens to maintain in the United States records of the company and related records of its investment adviser and to update, as necessary, a list of affiliated persons of the company, investment adviser, and principal underwriter. The four companies and their associated persons spend approximately 101 hours annually complying with the requirements of the rule. This estimate is a revision of the 75 burden hours currently allocated to Rule 7d–1. The revision reflects the inclusion of an additional respondent and the Commission staff's administrative experience with the rule.

Canadian and other foreign investment companies have not sought to register under the Act pursuant to Rule 7d–1 in the past three years. If a company were to file an application under the rule, the Commission estimates that the rule would impose initial information collection burdens of approximately 90 hours on the company and its associated persons. Since no fund has sought to register under the Act pursuant to Rule 7d–1 in the last three years, the Commission is not including those burdens in its calculation of the annual burden hours.

After registration, a foreign company may file a supplemental application seeking special exemptive relief from provisions of the Act based on the company's particular circumstances. Because such filings are not mandated by Rule 7d–1 and are made at a company's discretion, no burden hours are allocated for such applications.

Form N–14 is the form for registration of securities to be issued by investment companies registered under the Act in business combination transactions specified in Rule 145(a) and exchange offers. There are approximately 95 registrants filing annually on Form N–14. Approximately 58,900 hours are used to meet the requirements of Form N–14. This represents 620 hours per registrant per year.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 16, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4314 Filed 2–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36864; File No. 600–28]

Notice of Extension of Comment Period; Request by ProTrade for Exemption From Registration as a Clearing Agency

February 21, 1996.

On September 22, 1994, ProTrade filed with the Securities and Exchange Commission (''Commission'') a Form CA–1 requesting an exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 [1] and Rule 17Ab2–1 thereunder.[2] ProTrade has supplemented the information provided in its Form CA–1 with letters to the Commission dated October 27, 1994; April 18, 1995; September 26, 1995; and October 2, 1995.

ProTrade's requested exemption from registration as a clearing agency was published for notice and comment in the Federal Register on December 20, 1995.[3] In that notice, the Commission requested public comments on ProTrade's requested exemption by February 16, 1996.

Recently, the Commission's staff has received requests from interested persons for an extension of time within which to comment on the ProTrade notice. These persons claim that the ProTrade request involves complicated and significant material and requires a longer comment period to ensure that interested persons have sufficient time in which to conduct thorough analyses.

Accordingly, in light of the substantial nature of the ProTrade request and in light of the Commission's desire to consider the views of all interested persons on the subject, the Commission believes that an extension of the comment period is appropriate. Therefore, the Commission is extending the comment period for responding to Securities Exchange Act Release No. 36587 [File No. 600–28] from February 16, 1996, until March 8, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4312 Filed 2–26–96; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78q–1 (1988).

[2] 17 CFR 240.17Ab2–1 (1995).

[3] Securities Exchange Act Release No. 36587 (December 13, 1995), 60 FR 65697 (December 20, 1995).

[4] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–36863; File No. SR–CBOE–96–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Liability of the Exchange and its Directors, Officers, Employees, and Agents, and Requiring Members to Pay the Exchange's Costs of Litigation Under Specified Circumstances

February 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 18, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 CBOE proposes to amend various Exchange rules pertaining to the liability of the Exchange, to adopt new Rule 6.7A prohibiting a member from instituting certain types of legal proceedings against Exchange officials, and to adopt new Rule 2.24 requiring a member to pay the Exchange's costs of litigation under specified circumstances. The text of the proposed

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

rule change is available at the Office of the Secretary, the CBOE, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE include 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 CBOE 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

Exchange Liability

The principal rule concerning Exchange liability is Rule 6.7(a), which currently provides that the Exchange shall not be liable to members, member organizations, or to associated persons for loss, damages, or claims arising out of the use or enjoyment of the facilities afforded by the Exchange, whether the loss, damages, or claims resulted from negligence or other unintentional errors or omissions, or from a cause not within the control of the Exchange. The proposed amendment to Rule 6.7(a) clarifies that, except as otherwise specifically provided in the rules of the Exchange, neither the Exchange nor its directors, officers, committee members, employees, or agents shall be liable to members or their associated persons except where the Exchange's liability is attributable to willful misconduct, gross negligence, bad faith, fraud, or criminal acts.

The proposed amendment to Rule 6.7 also incorporates, without material change, certain provisions which are currently set forth in Rules 23.14 and 24.12 to the effect that the Exchange is not liable for errors, omissions, or delays in collecting or disseminating various kinds of data, and the Exchange does not warrant such data. According to the Exchange, the purpose of moving these limitations of liability and disclaimers of warranty to Rule 6.7 is to place related subjects in a single rule.

In addition, the CBOE proposes to make non-substantive amendments to Rules 7.11, 23.14, and 30.75, and to delete Rule 24.12 in order to eliminate provisions that duplicate what is set forth in Rule 6.7, as well as to clarify and conform the language of all of the rules pertaining to the liability of the Exchange.

The CBOE also proposes certain changes to Interpretation and Policy .03 to Rule 6.7, which currently limits the Exchange's liability with respect to orders routed through the Exchange's Order Routing System (''ORS'') once the orders are printed at printers located on the Exchange floor. These changes clarify the description of the printers to which orders may be routed, and limits the liability of the Exchange once an order routed through ORS appears on a public automated routing (''PAR'') system terminal screen.

Legal Proceedings Against Exchange Directors, Officers, Employees, or Agents

The proposed amendment adds new Rule 6.7A, which prohibits a member or associated person from instituting a lawsuit or any other legal proceeding against any director, officer, employee, agent, or other official of the Exchange or any subsidiary, for actions taken or omitted to be taken in connection with the official business of the Exchange or any subsidiary. Rule 6.7A, however, does not apply to violations of the federal securities laws where a private right of action exists, to appeals of disciplinary actions, or to other actions by the Exchange as provided for in the rules of the Exchange. According to the Exchange, the purpose of disallowing lawsuits or other legal proceedings against Exchange officials or agents when they are acting on Exchange business is to eliminate the potential exposure to personal liability of such persons, which impairs their ability to perform their duties.

Exchange's Cost of Defending Legal Proceedings

The proposed amendment adds new Rule 2.24, which requires a member or associated person who fails to prevail in a lawsuit or other legal proceeding instituted by that person against the Exchange or other specified persons, and related to the business of the Exchange, to pay all reasonable expenses, including attorneys' fees, incurred by the CBOE in its defense during such proceeding. This provision is applied only in the event that the Exchange's expenses exceed fifty thousand dollars. According to the Exchange, this rule is intended to discourage unfounded, vexatious litigation against the CBOE where the Exchange's costs of defense are significant, without having any undue chilling effect on legitimate claims of members. The proposed rule would apply to all types of legal proceedings that might be instituted by members against the Exchange or any of its directors, officers, committee members, employees, or agents, except that it expressly would not apply to disciplinary actions by the Exchange or to appeals therefrom, to other administrative appeals of Exchange actions, or to any specific instance where the Board has granted a waiver of this provision.

The CBOE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that, by limiting the liability of the Exchange and its directors, officers, employees, and agents, by precluding certain types of legal actions by members against such persons individually, and by discouraging frivolous lawsuits against the Exchange, it will reduce the costs of the Exchange in responding to claims and lawsuits, thereby permitting the resources of the Exchange to be better utilized for promoting just and equitable principles of trade and for protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the CBOE consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rue change should be disapproved.

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, 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 proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–02 and should be submitted by March 19, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4352 Filed 2–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36861; File No. SR–DTC–96–05]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change to Modify the Procedures for Inter-depository Deliveries

February 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 26, 1996, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–96–05) as described in Items I and II below, which items have been prepared primarily by DTC. 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 on a temporary basis through August 31, 1996.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify the procedures for deliveries through the interface between DTC and the Philadelphia Depository Trust Company (''Philadep'') as part of the planned conversion on February 22, 1996, of DTC's money settlement system to an entirely same-day funds settlement (''SDFS'') system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify the procedures for deliveries through the interface between DTC and Philadep as part of the planned conversion of DTC's money settlement system to an entirely SDFS system. In a 1994 memorandum issued jointly with the National Securities Clearing Corporation (''NSCC''), DTC described the planned conversion of DTC's money settlement system to an entirely SDFS system and outlined the proposed modifications to the interface delivery procedures.[3]

In the next-day funds settlement (''NDFS'') system, DTC currently processes deliveries to and from Philadep through its inter-depository interface. This interface has been enhanced to improve efficiency while allowing both depositories to employ separate risk management controls. Until the conversion on February 22, 1996, to SDFS for all securities transaction settlements, the proposed procedures will apply only to securities currently eligible in DTC's SDFS system. Upon the conversion, the procedures will apply to the settlement of all securities transactions between DTC and Philadep.

When processing participants' deliveries to Philadep, DTC will employ an immediate update technique whereby a delivering participant's security position, collateral, and settlement accounts are immediately updated if that delivering participant has sufficient securities and collateral to allow the delivery to be completed. The delivering participant's position is reduced by the quantity of securities it is delivering, its settlement account is credited for the settlement value of the transaction, and its collateral monitor is increased by the settlement credit it has incurred and is reduced by the collateral value of the securities it is delivering (provided the securities being delivered are part of the participant's collateral position). To facilitate processing in the event of a failure to settler incident, DTC plans to establish a maximum net debit cap for interface activity at $400 million upon the scheduled conversion on February 22, 1996.

Once a delivery satisfies risk management controls and completes at DTC (*i.e.*, the participant has sufficient securities to make the delivery and the participant's collateral monitor will not become negative because of the delivery), it is sent to Philadep where it is subject to Philadep's internal risk management controls. In certain instances, Philadep's internal risk management controls may prevent a delivery from completing (*i.e.*, the receiving participant may not have sufficient collateral or the receipt will cause the participant to exceed its net debit cap) and may cause those deliveries to pend in Philadep's system. Deliver orders and payment orders that fail to successfully complete in Philadep's system at the end of each processing day (approximately 3:45 p.m.) will be returned to DTC, and DTC will reverse the deliveries to the original delivering participants. Such reversals will not be subject to Reciever-Authorized Delivery (''RAD'') processing[4] or risk management controls.

DTC believes the proposed rule change is consistent with Section 17A of the Act[5] and the rules and regulations thereunder because the proposed rule change will contribute to efficiencies in processing deliveries in the interface between DTC and Philadep. DTC also believes the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the proposed

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[3] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries submitted by DTC.

[3] The Depository Trust company and National Securities Clearing Corporation, Memorandum (July 29, 1994).

[4] RAD allows a participant to review and either approve or cancel incoming deliveries before they are processed in DTC's system. For a further discussion of DTC's RAD procedures, refer to Securities Exchange Act Release No. 25886 (July 6, 1988), [File No. SR–DTC–88–07] (notice of filing and immediate effectiveness of a proposed rule change implementing DTC's RAD procedures).

[5] 15 U.S.C. 78q–1 (1988).

rule change modifies the current interface procedures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

All participants were informed of the proposed rule change by a DTC Important Notice,[6] as well as by the 1994 memorandum referred to above.[7] Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[8] requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes that DTC's proposed procedures relating to inter-depository deliveries are consistent with DTC's obligations under Section 17A(b)(3)(F) because the proposed rule change establishes procedures for the processing of inter-depository deliveries between participants of DTC and Philadep.

Under the proposed procedures, DTC will immediately update a participant's account for deliver orders and payment orders sent to a Philadep participant through the interface. In the event that the delivery fails to complete at Philadep by the end of the day, the procedures provide a mechanism by which DTC will reverse the transaction to the original delivering participant without subjecting that reversal to RAD or risk management controls. DTC has represented that the expected volume of deliveries through the interface and the possibility of such reversal procedures being employed are minimal. However, the Commission encourages DTC to examine and consider future enhancements to the interface to provide a mechanism through which DTC participants can receive notification of transactions pending at Philadep.

The Commission realizes that the proposed inter-depository delivery procedures could create the situation where an inter-depository reversal resulting from an uncompleted delivery at Philadep forces a DTC participant to violate its net debit cap at DTC near the end of the day. Therefore, the Commission believes the proposed procedures for inter-depository reversals should be carefully monitored before they become permanent. DTC has agreed to monitor activity through the DTC-Philadep interface and to submit monthly reports to the Commission concerning the number of inter-depository reversals performed pursuant to the proposed procedures that cause participants to violate their net debit caps. For this reason, the Commission is temporarily approving the proposed rule change through August 31, 1996.

DTC 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 filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval of the proposed procedures will allow DTC participants to utilize the procedures for deliveries through the interface between DTC and Philadep immediately following DTC's conversion to an all SDFS system on February 22, 1996.

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 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 DTC. All submissions should refer to the file number SR-DTC–96–05 and should be submitted by March 19, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–96–05) be, and hereby is, approved on a temporary basis through August 31, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: February 15, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4310 Filed 2–26–96; 8:45 a.m.]

BILLING CODE 8010–01–M

[6] DTC Important Notice (January 9, 1996).

[7] *Supra* note 3.

[8] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[9] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–36867; File No. SR–DTC–96–06]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Amending Rules and Cross-Guarantee Agreement to Accommodate Same-Day Funds Settlement

February 21, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 2, 1996, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–96–06) as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments 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 purpose of the proposed rule change is to amend DTC's rules and to amend the current Netting Contract and Limited Cross-Guarantee agreement between the National Securities Clearing Corporation (''NSCC'') and DTC (''NSCC/DTC Agreement'') to accommodate the conversion of DTC's money settlement system entirely to a same-day funds settlement (''SDFS'') system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. § 78s(b)(1) (1988).

places specified in Item IV below. DTC 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

On February 22, 1996, DTC plans to combine its next-day funds settlement (''NDFS'') system and its SDFS system into a single SDFS system, which will be based on the design of the current SDFS system with some modifications. The conversion was described in three memoranda issued jointly by NSCC and DTC[3] and was discussed in a DTC proposed rule change approved by the Commission on May 16, 1995.[4]

In order to assure an efficient conversion, some of the modifications to the current SDFS system were implemented at various times during 1995. The amendments which are the subject of this proposal to DTC's rules are technical changes and are mainly concerned with the elimination of provisions relating to the NDFS system. Certain amendments to the rules are being made for purposes of clarity and consistency of style.[5]

The conversion also requires DTC to make certain amendments to the current NSCC/DTC Agreement.[6] The current NSCC/DTC Agreement provides that with respect to participants common to both entities (''common members''), DTC and NSCC agree to net daily a common member's final net settlement debit or credit at one entity with the common member's final net settlement credit or debit at the other entity. In most instances, the result will be either one net debit obligation payable to either DTC or NSCC or one net credit receivable from either DTC or NSCC.[7] In the event of a default of a common member, the current NSCC/DTC Agreement also provides that any resources remaining after the failed common member's obligations to the guaranteeing clearing agency have been satisfied will be made available to the other clearing agency. The guarantee is not absolute but rather is limited to the extent of the resources relative to the failed member remaining at the guaranteeing clearing agency. The principal resources will be the failed member's settlement net credit balances and its deposits to the clearing agencies' clearing funds.[8]

The proposed rule change amends the current NSCC/DTC Agreement to include cross-guarantees of NSCC and DTC arising from transactions effected through NSCC's continuous net settlement (''CNS'') system. NSCC's CNS system continually nets all trades due to settle the next day against each other and against prior days' unsettled long and short positions in the same securities. NSCC is the contra-party to each CNS transaction. Thus, NSCC participants obligated to deliver securities will deliver the securities to NSCC as free book-entry movements at DTC (''short covers''). NSCC participants obligated to receive securities will receive the securities from NSCC as free book-entry movements at DTC (''long allocation'').

Certain cross-guarantees between NSCC and DTC are being established to permit transactions to flow smoothly between DTC's system and the CNS system in a collateralized SDFS environment. DTC will provide a guarantee to NSCC of all long allocations, and NSCC will provide a guarantee to DTC for all short covers. The guarantees provided in the amended NSCC/DTC Agreement, among other things, will ensure that debits created in DTC's system will continue to be collateralized when the securities serving as collateral are delivered into the CNS system as short covers. The guarantees also will reduce risk at NSCC by ensuring that long allocations or the approximate value of long allocations will be made available to NSCC to cover certain exposures.

When securities that are received versus payment in DTC's system are turned into CNS short covers, NSCC will provide a guarantee to DTC equal to the prior day's closing price of the securities.[9] If CNS short covers are satisfied from securities that were not received versus payment in DTC's system, NSCC will provide a guarantee to DTC equal to the prior day's closing market value less an applicable haircut. DTC will take this guarantee into account for collateral monitor purposes.

When long allocations to participants are redelivered in DTC's system, DTC will provide a guarantee to NSCC equal to the prior day's closing price of the long allocations less an applicable haircut. The guarantee will serve as a collateral substitute for long allocations and only will be called on to the extent a participant fails to settle due to insolvency and NSCC's own internal close-out procedures result in a net loss to NSCC. DTC will apply its normal collateralization controls to the value of its guarantee to NSCC to ensure that it has sufficient collateral to cover potential guarantee obligations to NSCC as the result of a participant redelivering CNS long allocations in DTC's system.

DTC believes the proposed rule change is consistent with Section 17A of the Act[10] and the rules and regulations thereunder because the conversion entirely to an SDFS system will promote efficiency and safety in the clearance and settlement of securities transactions. DTC also believes the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the proposal modifies DTC's current SDFS system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The conversion plans were described in detail in the three joint memoranda referred to above and have been discussed extensively with participants and securities industry organizations. The 1994 memorandum described changes in the conversion plans as a result of those discussions. Since the distribution of the 1994 memorandum, written comments from DTC participants or others have not been solicited or received on the amendments to DTC's rules and the amendments to the NSCC/DTC Agreement which are the subject of the proposed rule change.

[2] The Commission has modified the text of the summaries submitted by DTC.

[3] The Depository Trust Company and National Securities Clearing Corporation, Memorandum (July 1, 1992; July 26, 1993; and July 29, 1994).

[4] For additional information regarding DTC's SDFS system, refer to Securities Exchange Act Release No. 35720 (May 16, 1995), 60 FR 27360 [File No. SR–DTC–95–06] (order granting accelerated approval of a proposed rule change modifying the SDFS system).

[5] The specific changes to DTC's rules are attached as Exhibit 2(a) to DTC's proposed rule change and is available in the Commission's Public Reference Room or through DTC.

[6] The cross-guarantees were described in the joint memorandum dated July 29, 1994, *supra* note 3.

[7] If a common member has either a net settlement debit at both DTC and NSCC or a net settlement credit at both DTC and NSCC, the common member will make payments to both DTC and NSCC or receive payments from both DTC and NSCC.

[8] For a complete description of DTC's and NSCC's agreement, refer to Securities Exchange Act Release No. 33548 (January 31, 1994), 59 FR 5638 [File Nos. SR–DTC–93–08 and SR–NSCC–93–07] (order approving proposed rule change).

[9] The guarantee from NSCC to DTC is calculated on a per share basis.

[10] 15 U.S.C. § 78q–1 (1988).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act [11] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

The Commission believes that DTC's proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) to facilitate the prompt and accurate clearance and settlement of securities transactions because the proposed rule change should facilitate DTC's conversion entirely to an SDFS system by eliminating provisions in DTC's rules relating to an NDFS system. The overall conversion to a SDFS system should help reduce systemic risk by, among other things, eliminating overnight credit risk. The SDFS system also should reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets, and other markets.

The Commission also believes the proposal is consistent with DTC's obligations to assure the safeguarding of securities and funds in its custody or control and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions because the proposed rule change should further reduce DTC's and NSCC's risk exposure by amending the NSCC/DTC Agreement to include cross-guarantees for transactions effected through NSCC's CNS system. The guarantees, among other things, should ensure that debits created in DTC's system will continue to be collateralized when the securities serving as collateral are delivered into the CNS system as short covers. Additionally, the guarantees also should reduce risk at NSCC by ensuring that long allocations or the approximate value of long allocations will be available to NSCC to cover certain exposures.

DTC 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 filing. The Commission finds good cause for so approving the proposed rule change because the proposed rule change modifies DTC's rules and the NSCC/DTC Agreement in anticipation of DTC's conversion to an SDFS system on February 22, 1996. Accelerated approval of the proposal will allow DTC to effect the conversion and to implement the safeguards provided under the NSCC/DTC Agreement on that date.

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 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 DTC. All submissions should refer to the file number SR–DTC–96–06 and should be submitted by March 19, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–96–06) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4350 Filed 2–26–96; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[12] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–36866; File No. SR–NSCC–96–03]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Modify NSCC's Rules and Procedures to Accommodate Same-Day Funds Settlement

February 21, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 16, 1996, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NSCC–96–03) as described in Items I and II below, which items have been prepared primarily by NSCC. On January 17, 1996, and January 31, 1996, NSCC filed amendments to the proposed rule change.[2] The Commission is publishing this notice and order to solicit comments 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 purpose of the proposed rule change is to modify NSCC's rules and procedures and to amend the current Netting Contract and Limited Cross-Guarantee agreement between NSCC and The Depository Trust Company (''DTC'') (''NSCC/DTC Agreement'') to accommodate the conversion from a next-day funds settlement (''NDFS'') system to a same-day funds settlement (''SDFS'') system.

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 that 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.[3]

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letters from Julie Buyers, Associate Counsel, NSCC, to Jerry Carpenter, Esq., Associate Director, Division of Market Regulation, Commission (January 17, 1996, and January 31, 1996).

[3] The Commission has modified the text of the summaries submitted by NSCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC Rule 1 (''Definitions'') is being amended to add a definition for the term ''refusal.'' The term ''refusal'' is defined as when a settling bank refuses to settle for one or more of its settling members or fund members.

Currently, NSCC calculates and collects clearing fund deposits from sponsored account members based on their activity at DTC.[4] Upon the implementation of SDFS, DTC will calculate sponsored account members' initial SDFS participants fund deposit. DTC will collect the required amount by including it in the sponsored account members' initial SDFS settlement amount at DTC. DTC will maintain the funds as part of DTC's participants fund. NSCC will not include this amount in determining the required deposit or the minimum cash requirement at NSCC for those sponsored account members. Accordingly, Rule 4 (''Clearing Fund'') and Procedure XV (''Clearing Fund Formula and Other Matters'') will reflect this revised policy. In addition, Rule 4 is being modified to reflect that interest paid on clearing fund deposits held at DTC will be paid at such rate or rates as DTC pays to its participants. The procedures also are being revised to require that cash deposits to the clearing fund be made by a same-day funds wire transfer.

Rule 9 (''Delivery and Receipt of Securities'') and Addendum D (''Statement of Policy, Envelope Settlement Service'' [''ESS'']) are being revised to address liquidity and credit risk concerns. The proposed changes restrict the use of ESS to those items which are currently eligible for delivery through ESS. This will preclude the use of ESS for any security that currently settles in same-day funds.

Rule 12 (''Settlement'') and Procedure VIII (''Money Settlement Service'') are being revised to accommodate the conversion from an NDFS system to an SDFS system. Under the proposed rule change, settling members and fund members must settle through a settling bank by a federal funds wire transfer. The proposed rule change also specifies that a settling member or a fund member is deemed to have failed to settle when NSCC receives a refusal from the participant's settling bank or when a participant's settling bank has failed to pay its net debit obligation. In addition, changes are being made to incorporate into participant's settlement statements, which reflect a participant's net debit and/or credit obligations for each business day, net settlement debits or credits arising through NSCC's cross-guaranty agreement.[5]

NSCC's ability to fine a member currently is found in Rule 26 (''Bills Rendered'') which governs NSCC's billing policy. Because NSCC may fine members on a daily basis rather than a monthly basis, the fine procedures will be moved from Rule 26 to new Rule 17 (''Fine Payments'') to permit NSCC to impose fines on members, including settling bank only members, at such frequency as determined by NSCC from time to time. In addition, a new Addendum P (''SDFS Failure-to-Settle Fines'') sets forth the fine schedule for an SDFS system failure to settle.

NSCC Rules 32, 33, 36 and 37 are being modified to accommodate the addition of settling bank only members.[6] Rule 39 (''Special Representatives/Index Receipt Agent'') is being amended to delete the duplicative language in the second paragraph regarding the form of an instruction on which NSCC may rely from a special representative or an index receipt agent. The forms of instructions from a special representative or an index receipt agent are the same forms as those on which NSCC may rely when it receives instructions directly from a participant; therefore, NSCC moved the reference to special representatives and index receipt agents into the same paragraph governing forms of instructions received from participants.

Rule 41 (''Funds Only Settlement Service'' [''FOSS'']) is being amended to explicitly state that settlement of money payments arising out of FOSS are to be made in accordance with Rule 12 regarding settlement of money payments.

Rule 52 (''Mutual Fund Services'') is being amended to clarify that settlement with respect to mutual fund services is governed by Rule 12 and to delete conflicting language. Currently, fund members have an earlier payment deadline with respect to their mutual fund services payment obligations. Concurrently with the implementation of SDFS, NSCC is establishing a uniform payment deadline for all members, including fund members, so that settling banks will not have to bifurcate their payment obligations.

Rule 54 (''Settling Bank Only Members'') is being modified to permit a bank that meets the financial requirements established by NSCC to become a settling bank if it is either a member of the Federal Reserve System or it has direct access to the Federal Reserve System.

Rule 55 (''Settling Banks'') is being amended to clarify that in the event of the insolvency of a settling bank which has failed to pay its net-net debit obligation, members that are represented by such insolvent bank will be charged pro rata for amounts owed by the insolvent bank.

NSCC Procedure IX (''Special Services'') is being revised to indicate that even though SDFS is being implemented, NSCC will retain the right to effect payments on a direct clearing member's behalf, other than for NSCC money settlement, either through the use of checks or by initiating wire transfer instructions.

Addendum B (''Standards of Financial Responsibility and Operational Capability'') is being revised to clarify that the criteria set forth therein with respect to bank applicants do not apply to applicants for settling bank only membership. Settling bank only members are required to meet the operational and financial requirements set forth in Addendum B(I)(A) and other requirements established by NSCC.[7]

NSCC believes that its short term funding resources are adequate and that it is extraordinarily unlikely that it would need to implement any liquidity contingency plan. Nevertheless, the rule change includes a revised Addendum F (''Statement of Policy in Relation to Same Day Funds Settlement'') which sets forth a liquidity contingency plan to be employed in the event that funding resources are insufficient. The statement permits NSCC to reverse debits and credits arising from non-guaranteed services to the extent necessary to

[4] Pursuant to its Procedure IX(B), NSCC makes available to participants that do not maintain a direct membership in a qualified securities depository the facilities of a qualified securities depository through the use of a sponsored account. The account is under the jurisdiction of NSCC, and NSCC is solely responsible for all liabilities arising from the use of the account including the payment of fees to the qualified securities depository.

[5] *Infra* note 8 and accompanying text.

[6] Rule 32 governs the use of facsimile signatures by NSCC participants; Rule 33 provides NSCC's Board of Directors or its delegates the authority to prescribe NSCC procedures; Rule 36 relates to proposed rule changes and notification of proposed rule changes; and Rule 37 provides procedures by which hearings are requested and conducted.

[7] NSCC requires settling bank only members to have a short-term obligation rating of at least A–2 by Standard and Poor's Corporation or P–2 by Moody's Investors Services Incorporated. For a further description of the financial responsibility and operational capability requirements for settling bank only members, refer to Securities Exchange Act Release No. 36714 (January 16, 1996), 61 FR 1807 [File No. SR–NSCC–95–13] (order approving proposed rule change enabling members settling mutual fund transactions in same-day funds to settle through a settling bank).

eliminate the liquidity problem, as determined by NSCC. It also permits NSCC to spread its obligations to make payments over such period of time as is necessary to eliminate the liquidity crisis. If the liquidity problem arises as a result of CNS deliveries, the policy statement permits NSCC to return CNS deliveries to the delivering member until such time as NSCC is able to pay for the deliveries. NSCC will reimburse members whose securities are returned for the financing costs incurred during the intervening period.

NSCC recognizes that its requirement that each member appoint a settling bank may impose an undue burden on fund members or mutual fund services members, which members use only non-guaranteed services. Therefore, Addendum F includes a provision which allows NSCC on a case by case basis to waive the requirement that a member appoint a settling bank to the extent that this requirement creates an undue burden on such a member.

The converion to SDFS also requires NSCC to make certain amendments to the current NSCC/DTC Agreement.[8] The current NSCC/DTC Agreement provides that with respect to participants common to both entities (''common members''), DTC and NSCC agree to net daily a common member's final net settlement debit or credit at one entity with the common member's final net settlement credit or debit at the other entity. In most instances, the result will be either one net debit obligation payable to either DTC or NSCC or one net credit receivable from either DTC or NSCC.[9] In the event of a default of a common member, the current NSCC/DTC Agreement also provides that any resources remaining after the failed common member's obligations to the guaranteeing clearing agency have been satisfied will be made available to the other clearing agency. The guaranty is not absolute but rather is limited to the extent of the resources relative to the failed member remaining at the guaranteeing clearing agency. The principal resources will be the failed member's settlement net credit balances and its deposits to the clearing agencies' clearing funds.

The proposed rule change amends the current NSCC/DTC Agreement to include cross-guaranties of NSCC and DTC arising from transactions effected through NSCC's continuous net settlement (''CNS'') system. NSCC's CNS system continually nets all trades due to settle the next day against each other and against prior days' unsettled long and short positions in the same securities. NSCC is the contraparty to each CNS transaction. Thus, NSCC participants obligated to deliver securities deliver the securities to NSCC as free, book-entry movements at DTC (''short covers''). NSCC participants obligated to receive securities will receive the securities from NSCC as free, book-entry movements at DTC (''long allocation'').

Certain cross-guarantees between NSCC and DTC are being established to permit transactions to flow smoothly between DTC's system and the CNS system in a collateralized SDFS environment. Under the amended NSCC/DTC Agreement, DTC will provide a guarantee to NSCC of all long allocations, and NSCC will provide a guarantee to DTC for all short covers. These guarantees will ensure, among other things, that debits created in DTC's system continue to be collateralized when the securities serving as collateral are delivered into the CNS system as short covers and will reduce risk at NSCC by ensuring that long allocations or the approximate value of long allocations will be made available to NSCC to cover certain exposures.

When securities received versus payment in DTC's system are turned into CNS short covers, NSCC will provide a guarantee to DTC equal to the prior day's closing price of the securities.[10] If CNS short covers are satisfied from securities that were not received versus payment in DTC's system, NSCC will provide a guarantee to DTC equal to the prior day's closing market value less an applicable haircut. DTC will take this guarantee into account for collateral monitor purposes.

When long allocations to participants are redelivered in DTC's system, DTC will provide a guarantee to NSCC equal to the prior day's closing price of the long allocations less an applicable haircut. The guarantee will serve as a collateral substitute for long allocations and only will be called on to the extent a participant fails to settle due to insolvency and NSCC's own internal close-out procedures result in a net loss to NSCC. DTC will apply its normal collateralization controls to the value of its guarantee to NSCC to ensure that it has sufficient collateral to cover potential guarantee obligations to NSCC as the result of a participant redelivering CNS long allocations in DTC's system.

It is the industry's intention that the conversion SDFS take effect on February 22, 1996; therefore, NSCC is seeking approval of these changes to coincide with this date.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[11] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

The Commission believes that NSCC's proposed rule change is consistent with NSCC's obligations under Section 17A(b)(3)(F) to facilitate the prompt and accurate clearance and settlement of securities transactions because the proposed rule change should facilitate NSCC's conversion to an entirely SDFS system by including provisions in NSCC's rules relating to an SDFS system. The conversion to a SDFS system should help reduce systemic risk by eliminating overnight credit risk. The SDFS system also should reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets, and other markets.

[8] For a complete description of DTC's and NSCC's current agreement, refer to Securities Exchange Act Release No. 33548 (January 31, 1994), 59 FR 5638 [File Nos. SR–DTC–93–08 and SR–NSCC–93–07] (order approving proposed rule change).

[9] If a common member has either a net settlement debit at both DTC and NSCC or a net settlement credit at both DTC and NSCC, the common member will make payments to both DTC and NSCC or receive payments from both DTC and NSCC.

[10] The guarantee from NSCC to DTC is calculated on a per share basis.

[11] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

The Commission also believes the proposal is consistent with NSCC's obligations to assure the safeguarding of securities and funds in its custody or control and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions because the proposed rule change should further reduce NSCC's and DTC's risk exposure by amending the NSCC/DTC Agreement to include cross-guaranties for transactions effected through NSCC's CNS system. The guaranties should, among other things, ensure that debits created in DTC's system continue to be collateralized when the securities serving as collateral are delivered into the CNS system as short covers. Additionally, the guarantees also should reduce risk at NSCC by ensuring that long allocations or the appropriate value of long allocations will be available to NSCC to cover certain exposures.

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 filing. The Commission finds good cause for so approving the proposed rule change because the proposed rule change modifies NSCC's rules and the NSCC/DTC Agreement in anticipation of NSCC's and the securities industry's conversion to SDFS on February 22, 1996. Accelerated approval of the proposal will allow NSCC to effect the conversion and to implement the safeguards provided under the NSCC/DTC Agreement on that date.

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 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 NSCC. All submissions should refer to the file number SR–96–03 and should be submitted by March 19, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–96–03) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4351 Filed 2–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36860; File No. SR–OCC–96–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Accelerated Approval of a Proposed Rule Change to Modify the Stock Loan/Hedge Program to Accommodate Same-Day Funds Settlement

February 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 16, 1996, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–OCC–96–02) as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments 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 purpose of the proposed rule change is to modify OCC's rules relating to its Stock Loan/Hedge Program (''Hedge Program'')[2] to reflect the conversion of the equity securities processing operations of The Depository Trust Company (''DTC'') to a same-day funds settlement (''SDFS'') system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make technical modifications to OCC's rules governing its Hedge Program to accommodate the conversion by DTC of its equity securities processing operations to an SDFS system. DTC is scheduled to convert to an SDFS system on February 22, 1996.

Stock loans under the Hedge Program are effected by a book-entry transfer on the books of a correspondent depository (*i.e.*, a securities depository at which OCC has an account and which provides services to OCC in connection with the Hedge Program). The Midwest Securities Trust Company (''MSTC'') had acted as the only correspondent depository since the Hedge Program was established. However, MSTC has withdrawn from the securities depository business,[4] and OCC has made arrangements for DTC to act as a correspondent depository for the Hedge Program.

Under OCC's rules governing the Hedge Program, after two participating clearing members have agreed to the terms of a stock loan, the lending clearing member transfers the stock that is the subject of the loan by book-entry into OCC's account at a correspondent depository. The lending clearing member's transfer instructions identify the borrowing clearing member and specify the amount of cash to be received as collateral by the lending clearing member. Once the stock is delivered into OCC's account, OCC instructs the correspondent depository to redeliver the stock to the account of the borrowing clearing member against payment of the required collateral. The cash payments also are effected through

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[12] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a description of OCC's Stock Loan/Hedge Program, refer to Securities Exchange Act Release No. 32638 (July 15, 1993), 58 FR 39264 [File No. SR–OCC–92–34] (order granting permanent approval of the Stock Loan/Hedge Program).

[3] The Commission has modified the text of the summaries submitted by OCC.

[4] Securities Exchange Act Release No. 36684 (January 5, 1996), 61 FR 1195 (January 17, 1996) [File Nos. SR–CHX–95–27, SR–DTC–95–22, SR–MCC–95–04, SR–MSTC–95–10, and SR–NSCC–95–15] (order approving arrangements relating to a decision by the Chicago Stock Exchange, Inc. to withdraw from the clearance and settlement, securities depository, and branch receives business).

the facilities of the correspondent depository.

It is essential to OCC's operation of the Hedge Program that OCC must never have a position against a lending clearing member without an offsetting position against a borrowing clearing member unless one of the two clearing members defaults in its obligations with respect to a stock loan. In order to assure that OCC never has a position against a lending or a borrowing clearing member without an offsetting position against another clearing member, OCC rule 2201, concerning the initiation of stock loans, currently specifies that a transfer of stock from a lending clearing member to OCC will not constitute a final entry on the books of a correspondent depository until the related transfer from OCC to the borrowing clearing member constitutes a final entry on the books of the correspondent depository. Similarly, OCC rule 2208, concerning the unwinding or settlement of stock loans, currently specifies that a transfer of stock from a borrowing clearing member to OCC will not constitute a final entry on the books of the correspondent depository until the related transfer from OCC to the lending clearing member constitutes a final entry on the books of the correspondent depository. These rules were drafted to operate in conjunction with MSTC's next-day funds settlement (''NDFS'') system as set forth in MSTC's rules.

DTC's SDFS system rules are premised on the concept that any securities transfers in DTC's system will become final at the time that the funds relating to the securities transfer are transferred. Accordingly, as a technical matter, DTC's SDFS system rules do not accommodate the concept currently contained in OCC rules 2201 and 2208 that provide one transfer will become final only when another related transfer becomes final. Therefore, the proposed rule change modifies OCC rules 2201(c) and 2208(a). As amended, rule 2201 regarding the initiation of stock loans provides that OCC may initiate an additional transfer to return stock to a lending clearing member if for any reason it appears to OCC that the related transfer from OCC to the borrowing clearing member will not become final on the books of the correspondent depository on the same day as the transfer from the lending clearing member to OCC. Correspondingly, amended rule 2208 regarding settlement of stock loans (*i.e.*, the return of a stock loan) now provides that OCC may initiate an additional transfer to return loaned stock to a borrowing clearing member if for any reason it appears to OCC that the related transfer from OCC to the lending clearing member will not become final on the books of the correspondent depository on the same day as the transfer from the borrowing clearing member to OCC. The two rules as modified are compatible with DTC's SDFS system while still preserving OCC's ability to assure that in the ordinary course at the end of each day it will have an offsetting borrow position for each loan position and an offsetting loan position for each borrow position.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the proposal will conform OCC's rules to DTC's rules thereby improving the linkage and coordination between two clearing agencies.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act [5] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes that OCC's proposed procedures relating to its Hedge Program are consistent with OCC's obligations under Section 17A(b)(3)(F) for the reasons discussed below.

The Commission believes that the proposed rule change is consistent with OCC's obligations under Section 17A(b)(3)(F) to promote the prompt and accurate clearance and settlement of securities transactions because the proposal modifies OCC's Hedge Program to enable it to operate in a SDFS environment at DTC thus allowing the continued use of book-entry movements of stock loans. The Commission also believes OCC's proposed procedures should help to assure the safeguarding of securities and funds which are in the custody or control of OCC or for which OCC is responsible because OCC's amended rules will provide OCC with the authority to make an additional stock loan transfer if it appears the related transfer will not become final on the books of the correspondent depository on the same day. These rules should help to assure that absent a clearing member default OCC will never have a position against a borrowing or lending clearing member without an offsetting position against another clearing member.

Additionally, the Commission believes the proposed rule change should foster cooperation and coordination between OCC and DTC because the modification of OCC's Hedge Program procedures conform OCC's rules to DTC's rules regarding the finality of securities transactions and facilitates OCC's use of DTC as a Correspondent depository in its Hedge Program.

OCC 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 filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval of the proposed modifications will allow OCC to continue to utilize DTC as a correspondent depository in its Hedge Program following the conversion to SDFS on February 22, 1996. Therefore, OCC participants will be able to continue to utilize the Hedge Program without any disruption.

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be

[5] 15 U.S.C. 78q–1(b)(3)(F) (1988).

available for inspection and copying in the Commission's Public Reference Room, 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 OCC. All submissions should refer to the file number SR–OCC–96–02 and should be submitted by March 19, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–96–02) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4311 Filed 2–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36858; File No. SR–PHLX–95–45]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Industry Index Option Hedge Exemption

February 16, 1996.

On September 18, 1995, the Philadelphia Stock Exchange, Inc. (''PHLX'' 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 PHLX Rule 1001A, ''Position Limits,'' to establish a hedge exemption from industry (narrow-based) index option position and exercise limits.[3]

The proposed rule change was published for comment in the Federal Register on October 23, 1995.[4] No comments were received on the proposed rule change. On December 20, 1995, on February 14, 1996, and on February 16, 1996, the PHLX amended its proposal.[5]

The PHLX proposes to exempt from position and exercise limits any position in an industry index option that is hedged by share positions in at least 75% of the number of component stocks of that index or securities convertible into such stock.[6] Under the proposal, no position in an industry index option may exceed two times the narrow-based index option position specified in PHLX Rule 1001A(b)(i)[7] and the value of the index option position may not exceed the value of the underlying hedging portfolio. The value of the underlying hedging portfolio is determined as follows: (1) the total market value of the net stock position, less (2) the value of: (a) the notional value[8] of any offsetting calls and puts in the respective index option class; (b) the notional value of any offsetting positions in stock index futures or options; and (c) any economically equivalent positions.[9]

Under the proposal, exercise limits will continue to correspond to position limits, so that investors may exercise the number of contracts set forth as the position limit, as well as those contracts exempted by the proposal, during five consecutive business days.

The proposed exemption requires that both the options and stock positions be initiated and liquidated in an orderly manner. Specifically, a reduction of the options position must occur at or before the corresponding reduction in the stock portfolio position.

The proposed exemption will be available to firm and proprietary traders, as well as public customers. According to the PHLX, because customers rely, for the most part, on a limited number of proprietary traders to facilitate large-sized orders, failure to include such traders in the exemption could effectively reduce the benefit of the exemption to customers.

The PHLX believes that the hedge exemption provision is necessary to better meet the needs of investors who would use PHLX industry index options for investment and hedging purposes. The PHLX states that many institutional traders and portfolio managers deal in dollar amounts much greater than permissible under current position limit levels and have expressed that Exchange position limits hamper their ability to fully utilize Exchange index options. As a result, the PHLX believes that many index options are ineffective for such traders, who may as a result choose to

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[6] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1995).

[3] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.,* aggregating long calls and short puts or long puts and short calls). 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 consecutive business days.

[4] *See* Securities Exchange Act Release No. 36380 (October 17, 1995), 60 FR 54403.

[5] On December 20, 1995, the PHLX amended its proposal to specify certain requirements and monitoring procedures which the Exchange will use in connection with the hedge exemption. *See* Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated December 20, 1995 (''Amendment No. 1''). Among other things, Amendment No. 1 indicates that the PHLX will monitor accounts utilizing the hedge exemption on a daily basis; that the hedging portfolio must be previously established and that options must be carried in an account with an Exchange member; that initiating or liquidating positions should not be conducted in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes; and that the PHLX's Market Surveillance Department must be notified of any material change in the portfolio or futures positions which materially affects the unhedged value of the portfolio. Amendment No. 2 modifies the proposal by providing that the industry index hedge exemption will be two times the existing position and exercise limit rather than three times the limit because the hedged option position is held in addition to the contracts currently permitted under the Exchange's rules. In addition, Amendment No. 2 indicates that offsetting positions in stock index futures options must be deducted from the total market value of the net stock position to determine the value of the hedging portfolio. *See* Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated February 14, 1996 (''Amendment No. 2''). On February 16, 1996, the PHLX amended its proposal by adding subparagraph (C) to paragraph (b)(2) of Commentary .01 in order to make clear that economically equivalent positions must be deducted from the market value of the net stock position to determine the value of the underlying portfolio. *See* Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated February 16, 1996 (''Amendment No. 3'').

[6] The PHLX permits the use of convertible securities in its equity option hedge exemption. *See* Securities Exchange Act Release No. 32174 (April 20, 1993), 58 FR 25687 (April 27, 1993) (order approving File No. SR–PHLX–92–22). Similarly, other options exchange permit the use of convertible securities in broad-based index hedge exemptions. *See* Securities Exchange Act Release No. 35738 (May 18, 1995), 60 FR 27573 (May 24, 1995) (File Nos. SR–Amex–95–13, SR–CBOE–95–13, SR–NYSE–95–04, SR–PSE–95–05, and SR–PHLX–95–10) (permanently approving hedge exemption pilot programs).

[7] PHLX Rule 1001A(b)(i) provides the following position limits for industry index options: 6,000 contracts if any single stock accounted, on average, for 30% or more of the index value during the 30-day period preceding the review; 9,000 contracts if any single stock accounted, on average, for 20% or more of the index value or any five stocks together accounted, on average, for more than 50% of the index value, but no single stock in the group accounted on average, for 30% or more of the index value during the 30-day period preceding the review; or 12,000 contracts if none of the above conditions apply. *See* Securities Exchange Act Release No. 36194 (September 6, 1995), 60 FR 47637 (order approving File No. SR–PHLX–95–16) (increasing position limits for industry index options to 6,000, 9,000 or 12,000 contracts).

[8] Notional values are determined by adding the number of contracts and multiplying the total by the multiplier, expressing that number in dollar terms.

[9] *See* Amendment Nos. 2 and 3, *supra* note 5.

use futures instruments.[10] Thus, the PHLX believes that the proposed hedge exemption should alleviate the situation where investors with substantial hedging needs are discouraged from participation in the options markets by existing position limits.

The PHLX believes that the proposed narrow-based index option hedge exemption should not increase the potential for disruption or manipulation in the markets for the stocks underlying each index. In this regard, the proposal incorporates several surveillance safeguards, which the PHLX will employ to monitor the use of this exemption. Specifically, the Exchange will require that an application for exemption be filed by member firms and their customers who seek hedge exemptions. The Exchange will review the application and approve only those applications that satisfy the hedge exemption requirements. The Exchange's Market Surveillance Department will monitor trading activity in PHLX-traded index options and the stocks underlying those indexes to detect potential frontrunning and manipulation abuses, as well as review such trading to ensure that the closing of positions subject to an exemption is conducted in a fair and orderly manner.[11]

The PHLX also notes that the provision itself contains several built-in safeguards. First, the hedge must consist of a position in at least 75% of the stocks underlying the index. Thus, the ''basket'' of stocks constituting the hedge resembles the underlying index.[12] Second, the proposal provides a ceiling on the maximum size of the option position by providing that positions established under the proposal may not exceed two times the limits established under PHLX Rule 1001A(b)(i). Third, both the options and stock positions must be initiated and liquidated in an orderly manner, meaning that a reduction of the options position must occur at or before the corresponding reduction in the stock portfolio position. Lastly, the value of the industry index option position cannot exceed the dollar value of the underlying hedging portfolio. The purpose of this requirement is to further ensure that stock transactions are not used to manipulate the market in a manner benefiting the option position. In addition, these safeguards prevent the increased positions from being used in a leveraged manner by ensuring that the options position subject to the increased position limit is properly ''covered'' by the hedge.

For the above reasons, the PHLX believes that the proposed industry index hedge exemption should increase the depth and liquidity of the markets for narrow-based index options and allow more effective hedging with underlying stock portfolios without increasing the potential for market manipulation or disruption, consistent with the purposes of position and exercise limits.

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) thereunder.[13] The Commission concludes that providing for increased position and exercise limits for narrow-based index options in circumstances where those excess positions are fully hedged with offsetting stock positions will provide greater depth and liquidity to the market and will allow investors to hedge their stock portfolios more effectively, without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options market or the underlying stock market.

Specifically, the PHLX proposal contains safeguards that should make it difficult to use the exempted positions to disrupt or manipulate the market. First, requests for the exemption must be approved by the PHLX, which should ensure that the hedges are appropriate for the position being taken and are in compliance with PHLX rules. Second, the stock portfolio must consist of at least 75% of the number of component securities underlying the index, and must correspond in value to the value of the options position hedged, so that the increased positions are less likely to be used in a leveraged manner in any manipulative scheme. As noted above the value of the hedging portfolio is equal to (1) The total market value of the net stock position; less (2) the value of (a) any offsetting calls and puts in the index option; (b) any offsetting positions in related stock index futures or options; and (c) any economically equivalent positions.[14] Third, both the options and the stock positions must be initiated and liquidated in an orderly manner. Moreover, a reduction of the options position must occur at or before the corresponding reduction in the stock portfolio position, thereby helping to ensure that the stock transactions are not used to impact the market so as to benefit the options positions. Fourth, the PHLX's Market Surveillance Department must be notified in writing for approval prior to liquidating or initiating any such position and the PHLX's Market Surveillance Department must also be notified of any material change in the portfolio or futures positions which materially affects the value of the qualified portfolio. Fifth, the maximum hedge exemption position is two times the existing limit. The ''two times the limit'' is not automatic and the PHLX has the authority to approve a hedge limit for less than that amount.

The Commission notes that the PHLX's surveillance procedures are designed to detect as well as deter manipulation and market disruptions. In particular, the PHLX will monitor the options position of a person utilizing the hedge exemption on a daily basis to ensure that each option contract is hedged by the equivalent dollar amount of component securities.[15] In addition, the PHLX's Market Surveillance Department will monitor trading activity in PHLX-traded index options and their underlying component stocks to detect potential frontrunning and manipulation, and to ensure that the closing of positions subject to the exemption is conducted in a fair and orderly manner. Violation of any of the provisions of the industry index hedge exemption, absent reasonable justification or excuse, will result in the withdrawal of the hedge exemption and

[10] Under rules promulgated by the Commodity Futures Trading Commission, futures positions that are deemed to be bona fide hedging transactions (as defined) are exempted from position limit rules. *See* Securities Exchange Act Release No. 25739 (May 24, 1988), 53 FR 20204, (June 2, 1988) (order approving File No. SR–CBOE–87–25).

[11] *See also* Amendment No. 1, *supra* note 5.

[12] To determine the share amount of each component required to hedge an index option position: index value × index multiplier × component's weighing = dollar amount of component. That amount divided by price = number of shares of component. Conversely, to determine how many options can be purchased based on a certain portfolio, divide the dollar amount of the basket by the index value × index multiplier.

[13] 15 U.S.C. 78f(b)(5) (1988 & Supp. V 1993).

[14] *See* Amendment Nos. 2 and 3, *supra* note 5. According to the PHLX, ''economically equivalent'' positions are instruments whose prices fluctuate in tandem. The PHLX believes, for example, that National Over-the-Counter Index options and Nasdaq 100 Index options are economic equivalents, and that stock and bonds issued by the same company may be economic equivalents. Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, PHLX, and Yvonne Fraticelli, Attorney, OMS, on February 14, 1996.

[15] Market participants granted a hedge exemption are also required to keep their application forms for the hedge exemption current and promptly provide the PHLX with any information concerning the dollar value and composition of the stock portfolio, the current hedged and aggregate option positions, and any stock index futures positions, or economically equivalent positions.

subsequent denial of an application for a hedge exemption thereunder.

Finally, the Commission believes that it is reasonable for the PHLX to allow firm and proprietary traders, as well as public customers, to utilize the proposed hedge exemption. The Commission believes that extending the narrow-based index option hedge exemption to firm and proprietary traders may help to increase the depth and liquidity of the market for industry index options and may help to ensure that public customers receive the full benefit of the exemption. Moreover, the PHLX's monitoring procedures, as described above, should be able to detect abuses and ensure that the options position, whether firm, proprietary trader, or customer, is properly hedged.

The Commission finds good cause for approving Amendment Nos. 1, 2, and 3 to the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the Federal Register. Specifically, Amendment No. 1, is designed to protect investors and the public interest by providing additional requirements and surveillance procedures which the Exchange will use in monitoring the narrow-based index option hedge exemption. Amendment No. 2 clarifies the Exchange's proposal by indicating that the hedge exemption allows a market participant to hold up to two times, rather than three times, the current position limit because the hedged position is held in addition to the contracts permitted under PHLX Rule 1001A. In addition, Amendment No. 2 strengthens the PHLX's proposal by providing that options on stock index futures must be deducted when calculating the value of the hedging portfolio. Amendment No. 3 strengthens the PHLX's proposal by making technical revisions that clarify, among other things, that economically equivalent positions must be deducted when calculating the value of the hedging portfolio. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act, to approve Amendment Nos. 1, 2, and 3 to the proposal on an accelerated basis.

Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 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 in the caption above and should be submitted by March 19, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–PHLX–95–45), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4313 Filed 2–26–96; 8:45 a.m.]

BILLING CODE 8010–01–M

[Release No. 34–36862; File No. SR–Phlx–95–86]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Index Options Exercise Advices

February 20, 1996

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Phlx Rule 1042A, Exercise of Option Contracts, and Floor Procedure Advice (''Advice'') G–1, Exercise Requirements, by extending the deadline for the receipt or preparation of a memorandum to exercise, as well as the submission of an exercise advice form, from five minutes after the close of trading to 4:30 p.m. In addition, as minor changes to paragraph (ii) will result in the inclusion of the National Over-the-Counter Index option, Phlx Rule 1042A(a)(iii) is being deleted. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx 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 Phlx has prepared summaries, set forth in Section 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

Phlx Rule 1042A and Advice G–1 govern the exercise of index options. These provisions state that with respect to index option contracts, clearing members are required to follow the procedures of the Options Clearing Corporation (''OCC'') for tendering exercise notices. Phlx member organizations are also required to comply with the following procedures. First, a memorandum to exercise any American style index option must be received or prepared by the Phlx member organization no later than five minutes after the close of trading on the day of exercise. Thus, the current deadline is 4:15 p.m. for narrow-based index options and 4:20 p.m. for broadbased index options. Second, when exercising 25 or more American style index option contracts, other than an option contract on the National Over-the-Counter Index, submission on an exercise advice form to the Exchange is required no later than five minutes after the close of trading on the day of exercise. Third, with respect to options on the National Over-the-Counter Index, the deadline for compliance with the

[16] 15 U.S.C. 78s(b)(2) (1982).

[17] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

above provisions is 4:20 p.m. or five minutes after the close of trading.

Purusant to Phlx Rule 1042A(b), however, the above requirements are not applicable with respect to any series of stock index options on the last day of trading prior to the expiration date of such series of options. The above stated requirements are also not applicable to European style index options which, by definition, cannot be exercised prior to expiration. Lastly, the Exchange notes that the procedures for exercising equity option contracts contained in Phlx Rule 1042, are not affected by this rule proposal.

The Phlx proposes to establish a 4:30 p.m. deadline for both a memorandum to exercise and exercise advice forms for all index options. This will extend the cut-off time by 15 minutes for narrow-based index options and by 10 minutes for broad-based index options. According to the Phlx, the purpose of this rule change is to provide additional time for the preparation and transmission of the required exercise information. After the close of trading, index option position holders are not instantly aware of their final positions, including hedges in the underlying security and futures contracts. According to the Phlx, knowing the exact, final position is often crucial to making a determination of whether to exercise.

In addition, the current procedure for these submissions presents logistical problems for compliance within five minutes after the close of trading. For example, the distance between trading stations for certain index options on the Phlx trading floor (*e.g.*, Gold/Silver Index) and the depository for advice submissions is not easy to traverse within five minutes, especially at the close of trading when there is a great deal of movement on the trading floor. If a trade occurs during the final minute of trading, this situation is exacerbated since additional time might be used to ensure that the trade ticket and participation was properly submitted. And, as stated above, reports from futures orders placed to hedge option positions must still be ascertained, usually by going to another location on the floor (*e.g.*, the booth where telephones and clerks are located). The Phlx believes that it is in the interest of order and safety to change this process.

The Phlx believes that the current deadline not only creates time pressure and uncertainty, but may also force index option traders not to participate in large or complex trades, especially near the close, thereby hampering liquidity. The Phlx believes that the extra time is reasonable under these circumstances.

Lastly, to improve clarity, the Exchange proposes to delete paragraph (a)(iii) of Phlx Rule 1042A and incorporate the exercise requirements pertaining to options on the National Over-the-Counter Index in paragraph (a)(ii).

2. Statutory Basis

The Phlx believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and with Section 6(b)(5) in particular,[3] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, by eliminating the hardship to all index option investors and traders that is caused by having insufficient time after the close to make exercise decisions, will serve to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Phlx consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–86 and should be submitted by March 19, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–4353 Filed 2–26–96; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. § 78f (b)(5) (1988).

[4] 17 CFR 200.30–3 (a)(12) (1994).

SOCIAL SECURITY ADMINISTRATION

Privacy Act 1974; Computer Matching Programs (Model for SSA/State and Local Governments Match of Prisoner Data, Match #1002)

AGENCY: Social Security Administration.

ACTION: Notice of Computer Matching Programs.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces computer matching programs that SSA plans to conduct.

DATES: SSA will file a report of the subject matching programs with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching programs will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either facsimile to (410) 966–5138 or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program

and Integrity Reviews at the address above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal Agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: February 14, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Program, State and Local Government Prisoner Data Systems With SSA

A. Participating Agencies

SSA and State and Local Governments.

B. Purpose of the Matching Program

Section 202(x)(1) of the Social Security Act (the Act) prevents SSA from paying old-age, survivors, and disability insurance benefits to certain prisoners. Section 1611(e)(1)(A) of the Act provides, with some exceptions, that inmates in public institutions are not eligible for payments under the supplemental security income program. The purpose of these matching programs is to assist SSA in enforcing these provisions.

C. Authority for Conducting the Matching Program

Section 202(x)(1), 1611(e)(1)(A), 202(x)(3), and 1631(e)(1)(a) of the Act.

D. Categories of Records and Individuals Covered by the Match

State and local government prison systems will submit names and other identifying information of prisoners from prisoner data systems. The SSA master files of Social Security Number holders and Social Security Number applications contains the SSNs and identifying information for all SSN holders. The SSA master beneficiary record and supplemental security income record contain beneficiary and payment information.

E. Inclusive Dates of the Match

These matching programs shall become effective no sooner than 40 days after a copy of the model agreement, as approved by the SSA Data Integrity Board, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement) or 30 days after publication of this notice in the Federal Register, or after both parties to each individual agreement have signed the agreement, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 96–4349 Filed 2–26–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending February 16, 1996

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–96–1077.

Date filed: February 13, 1996.

Parties: Members of the International Air Transport Association.

Subject: COMP Telex Mail Vote 774, Amend Excess baggage charge from Israel, Intended effective date: March 1, 1996.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–4422 Filed 2–26–96; 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 February 16, 1996

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–96–1075.

Date filed: February 13, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 12, 1996.

Description: Application of Pro Air, Inc., pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing interstate scheduled air transportation of persons, property and mail.

Docket Number: OST–96–1076.

Date filed: February 13, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 12, 1996.

Description: Application of Pro Air, Inc., pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing foreign scheduled air transportation of persons, property and mail.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–4423 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 96–015; Notice 01]

Publication of Report

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of updated survivability and vehicle miles traveled schedules.

SUMMARY: NHTSA has updated the passenger car and light truck schedules for survivability and vehicle miles traveled (VMT). These schedules are presented in the Final Report Updated

Vehicle Survivability and Travel Mileage Schedules (DOT HS808339, November 1995). These updated schedules will be used to assess the effects of proposed fuel economy and safety standards.

FOR FURTHER INFORMATION AND COPIES OF THE REPORT CONTACT:

Alan Berkowitz, Office of Planning and Consumer Programs, Safety Performance Standards, NHTSA, Washington, DC 20590, extension 202 366–4795.

Issued on: February 21, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–4385 Filed 2–26–96; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of National Customs Automation Program Test Regarding Remote Location Filing

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice is to announce that Customs is permitting an extension and expansion of the current Remote Location Filing Prototype One until the implementation of Remote Prototype Two. Remote Prototype Two will be conducted under the National Customs Automation Program (NCAP) prototype in the Automated Commercial Environment (ACE). This notice also invites public comments concerning any aspect of Remote Prototype One, informs interested members of the public of the eligibility requirements for voluntary participation in the testing of the extension of the first prototype, and describes the basis on which Customs will select the additional participants.

EFFECTIVE DATE: The first prototype test which began on June 19, 1995 will be extended until implementation of the NCAP Prototype, which includes Remote Prototype Two, and is scheduled to commence no sooner than January 1, 1997. Comments concerning the methodology of the first remote filing prototype must be received on or before March 28, 1996. To participate in the first prototype test, the necessary information, as outlined in this notice, must be filed with Customs on or before March 28, 1996.

ADDRESSES: Written comments regarding this notice, and information submitted to be considered for voluntary participation in the extension of the first prototype should be addressed to the Remote Filing Team, U.S. Customs Service, 4455 Genesee Street Room 342, Buffalo, New York 14225.

FOR FURTHER INFORMATION CONTACT: For systems or automation issues: Russ Lanouette (202) 927–0322, or Jackie Jegels (202) 927–0201. For operational or policy issues: Linda LeBaron (716) 626–0400 extension 204.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of title VI establishes the National Customs Automation Program (NCAP)—an automated and electronic system for the processing of commercial importations. Section 631 in Subtitle B of the Act creates sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411–1414), which define and list the existing and planned components of the NCAP (section 411), promulgate program goals (section 412), provide for the implementation and evaluation of the program (section 413), and provide for remote location filing (RLF) (section 414). Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)), implements the testing of NCAP components. See, T.D. 95–21 (60 FR 14211, March 16, 1995).

On April 6, 1995, Customs published a document in the Federal Register (60 FR 17605) announcing Customs plan to conduct the first of at least two prototype tests regarding remote location filing. The document invited public comments concerning any aspect of the test, informed interested members of the public of the eligibility requirements for voluntary participation in the testing and described the basis on which Customs would be selecting participants. The test was to commence no earlier than June 1, 1995, and was planned to be run for approximately six months. The test began on June 19, 1995.

On September 12–13, 1995, the Remote Team held an interim evaluation session for Remote Prototype One. The group discussed the positive and negative aspects of the Remote prototype.

Positive factors identified were: faster release and other processing; facilitation of cargo movement; decrease in need for paper; increased cost savings; promotion of service and account based processing; and established good partnership between Customs and Trade.

Negative factors identified as high priority for resolution were:

1. The test is limited in scenarios, Customs locations, and participants;
2. There are problems or limitations under Customs current Automated Commercial System (ACS) as well as uncertainty about the specifics of future capabilities under Customs Automated Commercial Environment (ACE);
3. There are issues that revolve around lack of coordination with other government agencies and computer interfaces that are incomplete or nonexistent;
4. There is a need for more complete training, cross training, and coordination for Customs, trade, and other government agencies.

After several structured group interview sessions, sub-teams were formed with internal and external participants to coordinate ideas and assign taskings to address or resolve issues #2–4. These sub-teams will remain intact in an effort to move forward with the resolution of the factors identified.

To address the first factor, the Assistant Commissioner, Office of Field Operations has approved the extension and expansion of Remote Prototype One until the implementation of Remote Prototype Two. Remote Prototype Two will be conducted under the ACE/NCAP Prototype umbrella and commence no sooner than January 1, 1997. This extension will allow for the Remote Team to work on improving systems planning, coordinating with other government agencies, and developing better training efforts with the benefit of additional scenarios, and an increased volume of transactions and participants. In addition, the NCAP Prototype will afford the Remote team the opportunity to test Remote under a more developed ACE system and within the developing Trade Compliance process.

Please note that participants for Remote Prototype Two will be selected under separate criteria to be outlined in a separate NCAP Prototype Federal Register notice. Therefore, Remote Prototype One participants may or may not qualify for Remote Prototype Two.

I. Description of Proposed Test

The Concept of Remote Location Filing

Remote Location Filing (RLF) will allow a program participant to file electronically an entry of merchandise with Customs from a location within the United States other than at the port of arrival or location of examination. Due to the nature of this prototype test,

certain Customs Regulations pertaining to brokers permits, surety bonds, and the entry of merchandise will be suspended.

Implementation of the extension of the first RLF prototype (Prototype One) will begin no sooner than March 29, 1996 and continue until the implementation of Remote Prototype Two. Prototype One will continue to be conducted with minimal system changes requiring Customs and participants to manually intervene in tracking and processing. All procedures and processes will be closely coordinated with all selected participants and affected parties before implementation.

The intent of extending this prototype is to continue to test such operational issues as communication, cargo movement and release, and service to and from remote locations with a greater volume of entry transactions and participants.

Regulatory Provisions Suspended

Certain provisions in Part 111, pertaining to Customs brokers, Part 113, pertaining to Customs bonds, and Part 141, pertaining to the entry of merchandise, of the Customs Regulations (19 CFR Parts 111, 113, and 141) will continue to be suspended during this prototype test to allow remote filings by brokers at locations where they currently do not hold permits, and to allow for the movement of cargo from its port of arrival to a designated examination site.

II. Eligibility Criteria

Note that participation in this testing is not confidential information. Lists of participants will be made available to the public by means of the Customs Electronic Bulletin Board and the Customs Administrative Message System, and upon written request.

In order to qualify for filing from a remote location, a prototype participant must have the capability to provide, on an entry-by-entry basis, the electronic entry of merchandise; the electronic entry summary of required information; the electronic transmission of invoice information (ABI/AII or EDIFACT); and the electronic payment of duties fees, and taxes (ACH). Other requirements and conditions are as follows.

1. Participants must have operational experience with the Customs Electronic Invoice Program (EIP) with ABI/AII or EDIFACT. Please note that this prototype is a test of Remote Location Filing and not of EIP;

2. Participants must be operational on Automated Clearinghouse (ACH) 30 days before implementation;

3. Only entry types 01 (consumption) and 11 (informal) will be accepted;

4. Cargo release must be certified from the entry summary (EI) transaction with the exception of immediate delivery, as explained in #5;

5. Participants will be allowed to file Immediate Delivery releases for direct arrival road and rail freight at the land border (essentially 19 CFR 142.21(a)) with use of paper invoices under Line Release, Border Cargo Selectivity (BCS), or Cargo Selectivity (CS). Submission of all line items at the time of release will be required of northern border filers, if the release is effected using BCS or CS. If an examination is required for a line release transaction, the filer must submit all relevant line item information through BCS or CS. Under BCS and CS, the examination will be performed at the port of arrival with the use of paper invoices. If the filer wishes the examination to be performed at an alternate site, full entry summary information (EI transaction) with electronic invoice must be transmitted;

6. Participants will not be allowed to file a RLF entry against cargo that has been moved in-bond;

7. Participants will be required to use OGA interfaces where they are available; and

8. If an examination is determined to be necessary, the cargo will be examined at the Customs port of arrival, or, at Customs discretion, at a filer's requested designated examination site which would be a Customs port which is at or nearest the final destination. This movement of cargo to a designated examination port will be under the importer's bond.

9. A participant must maintain an average of 1–2 entries per day throughout the testing period.

10. Locations available for prototype participation are those ports currently operational with the Remote test for release and summary processing. It is possible, however, that additional ports may be added.

The following are locations currently operational under the Remote test: (POA indicates port of arrival, ESP indicates summary processing location, and DES indicates designated examination site).

DDDP location	Electronic processing status
0901 Buffalo	ESP.
0903 Rochester	DES, ESP done in 0901.
1001 NY Seaport	POA, DES, ESP.
1303 Baltimore	POA, DES, ESP.
2704 Los Angeles	POA, DES, ESP.
4601 Newark	POA, DES, ESP.
4701 JFK	POA, DES, ESP.
5501 Dallas	DES, ESP done in 2704.

Prototype One Applications

This notice requests importers, or brokers on behalf of importers, to voluntarily apply for participation in Prototype One extension by submitting the following information to the Remote Filing Team, U.S. Customs Service, 4455 Genesee Street, Room 342, Buffalo, New York 14225 on or before the date set forth in the effective date paragraph at the beginning of this notice:

1. Name, address, and filer code of importer and, if applicable, broker.
2. Supplier/Vendor name, address, and manufacturer's number.
3. Types of commodities to be imported (high volume Harmonized Tariff numbers).
4. Other agency requirements.
5. Port(s) of arrival.
6. Designated examination site(s) (location nearest the final destination).
7. Monthly volume anticipated.
8. Requested entry summary processing location(s), if different from port of arrival.
9. Electronic Invoicing Program status and projected start date.
10. Electronic Payment (ACH) status and projected start date.
11. Main contact person and telephone number for participation questions.
12. Any comments on prototype participation.

Basis For Participant Selection

Eligible importers or importers with brokers will be considered for selection as participants in the Prototype One extension. Customs is looking for a variety of circumstances and participants in this first prototype. We stress that those not selected for participation will be invited to comment on the design, conduct, and evaluation of this prototype. Selection will be based on Customs EIP operational experience, volume anticipated, electronic abilities, and available electronic interfaces with other agency's import requirements. Participants selected will be notified in writing and selections will be announced by means of the Customs Electronic Bulletin Board and the Customs Administrative Message System.

III. Test Evaluation Criteria

Once participants are selected, the Remote Filing Team will review all public comments received concerning any aspect of the prototype, enhance

procedures in light of those comments, and form problem-solving teams.

Upon conclusion of the prototype the final results will be published in the Federal Register as required by § 101.9(b), Customs Regulations and reported to Congress.

Dated: February 21, 1996.

Samuel H. Banks,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 96–4425 Filed 2–26–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

Human Radiation Interagency Working Group; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the VA Human Radiation Interagency Working Group will be held on Wednesday, March 13, 1996, in room C–7C, at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. This meeting will convene at 9:00 a.m. and will adjourn at 4:30 p.m.

The purpose of the Working Group's meeting is to receive briefings and hold discussions to consider the feasibility of updating and expanding the epidemiological tables that are used to determine the likelihood that certain diseases could result from prior exposure to ionizing radiation. Additionally, the Working Group will receive briefings and hold discussions to determine whether existing laws governing the compensation of atomic veterans are now administered in ways that best balance allocation of resources between financial compensation to eligible veterans and administrative costs, including the costs and scientific credibility of dose reconstruction.

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Ms. Kathy Collier, Department of Veterans Affairs (213B), 810 Vermont Avenue, NW, Washington, DC 20420, phone (202) 273–7230, prior to March 4, 1996.

Members of the public may direct questions or submit prepared statements for review by the Working Group in advance of the meeting, in writing only, to Mr. R. J. Vogel, Under Secretary for Benefits (20/213B), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Working Group.

Dated: February 20, 1996.

By Direction of the Secretary.

R.J. Vogel,

Under Secretary for Benefits.

[FR Doc. 96–4306 Filed 2–26–96; 8:45 am]

BILLING CODE 8300–01–M

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held Wednesday and Thursday, March 27–28, 1996, at Techworld Plaza, 801 I Street, NW., Washington, DC. The meeting will be held in Room 1105. The March 27 session will convene at 8 a.m. and adjourn at 4 p.m. and the March 28 session will convene at 8 a.m. and adjourn at 12 noon. Both days will involve briefings by the National Program Directors of the Special-Disabilities Programs regarding the status of their acitivities over the last six months. Other topics will be: centralized funding, waiting time in the Blind Rehabilitation Program and the impact of the Veterans Health Administration's reorganization on the delivery of services for these special-disabilities programs.

The purpose of the Advisory Committee is to advise the Department on its prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Advisory Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

The Designated Federal Official for the Committee is Timothy Gerrity, Ph.D., Deputy Director for Medical Research Service. His phone number is (202) 565–4004.

Dated: February 19, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–4308 Filed 2–26–96; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Research Realignment, Notice of Meeting

As required by Section 10(a)(2) of the Federal Advisory Committee Act, the VA hereby gives notice that a meeting of the Research Realignment Advisory Committee will be held March 7–8, 1996. The meeting will start at 8 a.m. and adjourn at 5 p.m. on both days. The meeting will be held in the Sheraton Washington Hotel, 2660 Woodley Road, at Connecticut Avenue, N.W., Washington, DC, 20008. The purpose of the meeting is to review the present research programs to ensure that VA research meets the present and future healthcare needs.

The agenda for March 7 will address the details for implementing Special Emphasis Areas. The first day's agenda will also cover career development in a realigned research program and policies and procedures for informed consent in VA research.

On March 8 the committee will discuss Technology Transfer in VA, partnerships with industry, non-profit organizations, and other organizations. The Committee will also address activities of the Advisory Committee to Realign VA Residency Programs, and the role of academic affiliations in a realigned VA research program.

The meeting will be open to the public. Due to limited seating capacity, those who plan to attend or who have questions concerning the meeting should contact Efrend Z. Garcia, Chief Career Development, Department of Veterans Affairs at (202) 565–7133.

The meeting is open to the public to the capacity of the room. For those wishing to attend or who would like a copy of the meeting's final agenda, please contact Kathy Pessagno, Veterans Health Administration (117C), phone (202) 565–7296, Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, DC 20420, prior to March 15, 1996.

Dated: February 19, 1996.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–4307 Filed 2–26–96; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 61, No. 39
Tuesday, February 27, 1996

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).

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

TIME AND DATE: 2:00 pm, Wednesday, March 13, 1996.

PLACE: SR–189, Russell Senate Office Building, Washington, DC 20510.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Report on financial status of the Foundation fund
   A. Review of investment policy and current portfolio
1. Report on results of Scholarship Review Panel
   A. Discussion and consideration of scholarship candidates
   B. Selection of Goldwater Scholars

CONTACT PERSON FOR MORE INFORMATION: Gerald J. Smith, Executive Secretary, Telephone: (703) 756–6012.

Gerald J. Smith,

Executive Secretary.

[FR Doc. 96–4543 Filed 2–23–96; 1:41 pm]

BILLING CODE 4738–91–M

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

DATE AND TIME: February 28, 1996, 10:00 a.m.

PLACE: 888 First Street, N.E., Room 2C, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 647th Meeting—February 28, 1996, Regular Meeting (10:00 a.m.)

CAH–1.
  Docket # P–2541, 007, Cascade Power Company
CAH–2.
  Docket # P–2643, 002, Pacificorp Electric Operations
CAH–3.
  Docket # P–5772, 004, City of Augusta, Georgia
CAH–4.
  Docket # P–6879, 017, Southeastern Hydro-Power, Inc.
CAH–5.
  Docket # P–10684, 001, Lansing Board of Water and Light
  Other #S P–10684, 008, Lansing Board of Water and Light
CAH–6.
  Docket # P–8185, 024, Bluestone Energy Design, Inc.

Consent Agenda—Electric

CAE–1.
  Docket # ER96–749, 000, Pennsylvania Power Company
  Otheer #S TX94–9, 000, Borough of Zelienople, Pennsylvania
CAE–2.
  Docket # TX94–7, 000, AES Power, Inc.
CAE–3.
  Docket # ER91–480, 002, Jersey Central Power & Light Company
CAE–4.
  Docket # EC96–2, 000, Public Service Company of Colorado and Southwestern Public Service Company
CAE–5.
  Docket # ER95–1286, 000, Public Service Electric and Gas Company
  Other#S EL96–6, 000, Public Service Electric and Gas Company
  ER95–1287, 000, Public Service Electric and Gas Company
  ER95–1288, 000, Public Service Electric and Gas Company
  ER95–1289, 000, Public Service Electric and Gas Company
  ER95–1290, 000, Public Service Electric and Gas Company
CAE–6.
  Docket # ER95–1319, 000, Atlantic City Electric Company
CAE–7.
  Omitted
CAE–8.
  Docket # EL93–42, 001, Towns and Cities of Clayton, Lewes, Middletown, Delaware, et al. v. Delmarva Power & Light Company
CAE–9.
  Docket # ES96–4, 001, EL Paso Electric Company
CAE–10.
  Docket # ER96–185, 001, Illinois Power Company
CAE–11.
  Omitted
CAE–12.
  Docket # EG96–30, 000, Ventway Pty Ltd.
CAE–13.
  Docket # EG96–31, 000, AEP Resources Gippsland Power, L.L.C.
CAE–14.
  Docket # EG96–32, 000, CEA (Bermuda) Holdings II, Ltd.
CAE–15.
  Docket # EG96–33, 000, PMDC Gippsland Ldc
CAE–16.
  Docket # EG96–34, 000, AEP Resources International, Limited
CAE–17.
  Docket # EG96–35, 000, AEP Resources Project Management Company, Limited.
CAE–18.
  Docket # EG96–36, 000, Gippsland Energy, L.L.C.
CAE–19.
  Docket # EG96–38, 000, Nrgenerating Holdings (NO. 4) B.V.
CAE–20.
  Docket # EG96–40, 000, CMS Generation Yallourn Limited Duration Company
CAE–21.
  Docket # EL96–30, 000, Massachusetts Institute of Technology
CAE–22.
  Docket # EL95–57, 000, Municipal Electric Utilities Association of New York State v. Power Authority of the State of New York
CAE–23.
  Omitted
CAE–24.
  Docket # ER95–1614, 002, Vantus Energy Corporation
CAE–25.
  Docket # EL95–11, 000, Indeck-Olean Limited Partnership
  Other#S EL95–45, 000, Niagara Mohawk Power Corporation
  QF90–154, 004, Indeck-Olean Limited Partnership
  QF90–154, 005, Indeck-Olean Limited Partnership
CAE–26.
  Omitted

Consent Agenda—Gas and Oil

CAG–1.
  Docket # RP96–119, 000, Equitrans, L.P.
CAG–2.
  Docket # RP96–123, 000, Florida Gas Transmission Company
CAG–3.
  Docket # RP96–131, 000, Texas Gas Transmission Company
CAG–4.
  Docket # RP96–132, 000, Southern Natural Gas Company
  Other #S RP96–65, 000, Southern Natural Gas Company
CAG–5.

Docket # RP96–135, 000, Southern Natural Gas Company
CAG–6.
Docket # RP96–136, 000 Algonquin Gas Transmission Company
Other #S RP96–136, 001, Algonquin Gas Transmission Company
CAG–7.
Docket # TM96–3–16, 000, National Fuel Gas Supply Corporation
CAG–8.
Docket # RP96–124 000, Williams Natural Gas Company
CAG–9.
Docket # RP96–128 000, Natural Gas Pipeline Company of America
Other#S RP95–242, 007, Natural Gas Pipeline Company of America
RP95–326, 006, Natural Gas Pipeline Company of America
CAG–10.
Docket # RP96–129, 000, Trunkline Gas Company
CAG–11.
Docket # RP96–130, 000, Northern Natural Gas Company
CAG–12.
Docket # RP96–137, 000, Northern Natural Gas Company
CAG–13.
Docket # RP96–138, 000, Koch Gateway Pipeline Company
CAG–14.
Docket # TM96–4–32, 000, Colorado Interstate Gas Company
CAG–15. Omitted
CAG–16.
Docket # PR95–5, 000, Cranberry Pipeline Corporation
Other #S PR95–5, 001, Cranberry Pipeline Corporation
CAG–17.
Docket # PR95–7, 000, The Tekas Corporation
Other #S PR95–7, 001, The Tekas Corporation
CAG–18.
Docket # RP92–134, 014, Southern Natural Gas Company
Other #S RP93–15, 010, Southern Natural Gas Company
CAG–19.
Docket # RP96–14, 000, Southern Natural Gas Company
CAG–20.
Docket # RP96–81, 000, Carnegie Interstate Pipeline Company
CAG–21.
Docket # RP91–143, 028, Great Lakes Gas Transmission Limited Partnership
CAG–22. Omitted
CAG–23.
Docket # RP95–433, 000, CNG Transmission Corporation
CAG–24.
Docket # RP95–442, 000, Northwest Pipeline Corporation
CAG–25.
Docket # RP95–456, 001, Mississippi River Transmission Corporation
Other #S RP95–226, 000, Mississippi River Transmission Corporation
RP95–353, 000, Mississippi River Transmission Corporation
RP95–456, 000, Mississippi River Transmission Corporation
RP96–89, 000, Mississippi River Transmission Corporation
CAG–26.
Docket # RP96–51, 001, Panhandle Eastern Pipe Line Company
CAG–27.
Docket # RP96–45, 001, Northern Border Pipeline Company
CAG–28.
Docket # TM96–2–43, 002, Williams Natural Gas Company
CAG–29.
Docket # RP96–62, 001, ANR Pipeline Company
CAG–30.
Docket # RP96–61, 002, Tennessee Gas Pipeline Company
CAG–31.
Docket # RP96–58, 001, Koch Gateway Pipeline Company
CAG–32.
Docket # RP96–63, 002, Iroquois Gas Transmission System
CAG–33.
Docket # RP96–73, 001, Tennessee Gas Pipeline Company
Other#S TM96–2–9, 001, Tennessee Gas Pipeline Company
CAG–34.
Omitted
CAG–35.
Omitted
CAG–36.
Docket # RP91–166 029 Northwest Pipeline Corporation
Other#S RP91–166, 028, Northwest Pipeline Corporation
CAG–37.
Omitted
CAG–38.
Docket # RM95–3, 001, Filing Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs
CAG–39A.
Docket # RM95–4, 001, Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Co.
CAG–39B.
Docket # RM95–4, 000, Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Co.
CAG–40.
Docket # RP95–149, 003, ANR Pipeline Company et al.
CAG–41.
Docket # RM96–9, 000, Editorial Changes to Various Regulations to Conform References to Revised Part 154
CAG–42.
Omitted
CAG–43.
Omitted
CAG–44.
Docket # CP95–113, 001, K N Interstate Gas Transmission Company
CAG–45.
Docket # CP96–22, 000, K N Interstate Gas Transmission Company
CAG–46.
Docket # CP95–37, 000, Columbia Gas Transmission Corporation
CAG–47.
Docket # CP95–595, 000, Texas Eastern Transmission Corporation
Other #S CP95–595, 001, Texas Eastern Transmission Corporation
CAG–48.
Docket # CP96–1, 000, Mississippi River Transmission Corporation
CAG–49.
Docket # CP95–638, 000, Intermountain Municipal Gas Association v. Mountain Fuel Supply Company
CAG–50.
Omitted
CAG–51.
Omitted
CAG–52.
Docket # CP95–46, 000, Eastern States Oil & Gas, Inc.
Other#S CP93–200, 000, CNG Transmission Corporation
CP93–200, 004, CNG Transmission Corporation
CP95–32, 000, CNG Transmission Corporation
CP95–32, 001, CNG Transmission Corporation
CP95–244, 000, Eastern States Oil & Gas, Inc.
CP95–245, 000, CNG Transmission Corporation
CP95–245, 001, CNG Transmission Corporation
CAG–53.
Docket # CP95–658, 000, Questar Gas Management Company
Other#S CP95–650, 000, Questar Pipeline Company
CP95–650, 001, Questar Pipeline Company
CP95–650, 002, Questar Pipeline Company
CAG–54.
Docket # CP93–258, 008, Mojave Pipeline Company
CAG–55.
Docket # RP96–141, 000, CNG Transmission Corporation

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Pipeline Certificate Matters

PC–1.
Docket # RM96–5, 000, Gas Pipeline Facilities and Services on the Outer Continental Shelf, et al. Statement of Policy.
PC–2.
Docket # CP96–9, 000, Shell Gas Pipeline Company
Other#S CP96–159, 000, Shell Gas Pipeline Company Order on Request for Declaratory Order.

Dated: February 21, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–4451 Filed 2–22–96; 4:19 pm]

BILLING CODE 6717–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:30 a.m., Friday, March 1, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–4493 Filed 2–23–96; 1:41 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, March 4, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–4574 Filed 2–23–96; 3:50 pm]

BILLING CODE 6210–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, March 5, 1996.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6596A—Highway Accident Report: Highway/Rail Grade Crossing Collision Near Sycamore, South Carolina, May 2, 1995.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: February 23, 1996.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 96–4492 Filed 2–23–96; 11:24 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 26, March 4, 11, and 18, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 26

Monday, February 26

10:00 a.m.
Briefing by Organization of Agreement States (Public Meeting)
(Contact: Kathy Schneider, 301–415–2320)

Tuesday, February 27

10:00 a.m.
Briefing by Staff on Steam Generator Issues (Public Meeting)
(Contact: Jack Strosnider, 301–415–2795)

11:30 a.m.
Affirmation Session (Public Meeting)
a. Sequoyah Fuel Corporation and General Atomics; LBP–95–18 Approving Joint Settlement with Sequoyah Fuels Corp. (Tentative)
(Contact: Andrew Bates, 301–415–1963)

2:00 p.m.
Briefing by National Academy of Sciences on Review of Medical Use Program (Public Meeting)
(Contact: Trish Holahan, 301–415–7847)

Wednesday, February 28

9:30 a.m.
Briefing by NARUC on Utility Deregulation (Public Meeting)
(Contact: Spiros Droggitis, 301–415–2367)

Week of March 4—Tentative

Friday, March 8

1:00 p.m.
Briefing by Low Level Waste Forum (LLWF) (Public Meeting)
(Contact: Jim Kennedy, 301–415–6668)

2:30 p.m.
Briefing on Design Certification Issues (Public Meeting)

Week of March 11—Tentative

There are no meetings scheduled for the Week of March 11.

Week of March 18—Tentative

Tuesday, March 19

10:30 a.m.
Briefing on U.S. Enrichment Corporation Certification (Public Meeting)
(Contact: John Hickey, 301–415–7192)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: February 22, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–4491 Filed 2–23–96; 11:24 am]

BILLING CODE 7590–01–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming quarterly meeting of the Board of Directors.

DATE: A regular open meeting will be held Wednesday, March 13, 1996, at 10:00 a.m.

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue, N.W., Washington, D.C.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: February 22, 1996.

Lester M. Hunkele III,

Executive Director.

[FR Doc. 96–4544 Filed 2–23–96; 1:41 pm]

BILLING CODE 7630–01–M

Corrections

Federal Register
Vol. 61, No. 39
Tuesday, February 27, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11243-001]

Whitewater Engineering Corporation; Notice to File Additional Scientific Studies

Correction

In notice document 96–3958 appearing on page 6824, in the issue of Thursday, February 22, 1996, in the first column, the project number should read as set forth above.

BILLING CODE 1505–01–D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards

Correction

In the correction to rule document 96–1348 appearing on page 6412 in the issue of Tuesday, February 20, 1996 make the following correction:

Correction (1)(a) should have read as follows:

§ 121.201 [Corrected]

(1) On page 3289, in § 121.201, in the table ''Size Standards by SIC Industry'':

(a) In Division A, under the heading ''Size standards in number of employees or millions of Dollars'', the entry corresponding to ''0211 Beef Cattle Feedlots (Custom)'' should read ''1.5''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13-96-001]

Drawbridge Operation Regulations; Snohomish River, Everett, WA

Correction

In proposed rule document 96–3696 beginning on page 6588, in the issue of Wednesday, February 21, 1996, make the following correction:

On page 6588, in the second column, under **DATES:**, in the second line, ''April 29, 1996.'' should read ''April 22, 1996.''.

BILLING CODE 1505–01–D

federal register

Tuesday
February 27, 1996

Part II

Department of Commerce

International Trade Administration

19 CFR Parts 351, 353, and 355
Antidumping Duties; Countervailing Duties; Proposed Rule

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 351, 353, and 355

[Docket No. 951122274–5274–01]

RIN 0625–AA45

Antidumping Duties; Countervailing Duties

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of proposed rulemaking and request for Public Comments.

SUMMARY: The Department of Commerce (''the Department'') proposes to establish regulations to conform the Department's existing antidumping duty and countervailing duty regulations to the Uruguay Round Agreements Act, which implemented the results of the Uruguay Round multilateral trade negotiations. In addition to conforming changes, the Department has sought to issue regulations that: where appropriate and feasible, translate the principles of the implementing legislation into specific and predictable rules, thereby facilitating the administration of these laws and providing greater predictability for private parties affected by these laws; simplify and streamline the Department's administration of antidumping and countervailing duty proceedings in a manner consistent with the purpose of the statute and the President's regulatory principles; and codify certain administrative practices determined to be appropriate under the new statute and under the President's Regulatory Reform Initiative.

DATES: Written comments will be due on April 29, 1996.

ADDRESSES: Address written comments to Susan G. Esserman, Assistant Secretary for Import Administration, Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. Attention: Proposed Regulations/Uruguay Round Agreements Act. Each person submitting a comment is requested to include his or her name and address, and give reasons for any recommendation.

FOR FURTHER INFORMATION CONTACT: William D. Hunter (202) 482–1930, or Penelope Naas, (202) 482–3534.

SUPPLEMENTARY INFORMATION:

Background

In March, 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reform Initiative. This initiative is part of the National Performance review, and calls for immediate, comprehensive regulatory reform. The President directed all agencies to undertake an exhaustive review of all their regulations, with an emphasis on eliminating or modifying those that are obsolete or otherwise in need of reform. This proposed rule represents one of the steps in the Import Administration's response to the President's directive.

On January 3, 1995, the Department published an Advance Notice of Proposed Rulemaking and Request for Comments in the Federal Register (*Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement*, 60 FR 80 (''Advance Notice'')), as the first step in the process of developing regulations under the Uruguay Round Agreements Act (''URAA'').[1] The Department took the step of requesting comments in advance of issuing a proposed rule in order to ensure that, at the earliest possible stage, we could consider and take account the views of the private sector entities that are subject to the antidumping and countervailing duty laws.[2]

In these proposed regulations, the Department has been guided by the following objectives. First, the Department is proposing to revise the regulations to conform to the statutory amendments made by the URAA. Second, consistent with the Administration's commitment in the Statement of Administrative Action accompanying H.R. 5110 (H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994) (''SAA''), the Department has fleshed out through regulation certain statements contained in the SAA. Under section 102(d) of the URAA, the SAA constitutes an authoritative expression concerning the interpretation and application of the provisions of the URAA, including those provisions relating to antidumping and countervailing duties. Finally, the Department has developed proposed regulations mindful of President Clinton's Regulatory Reform Initiative and his directive to identify and either eliminate or modify obsolete and burdensome regulations.

The Department has carefully reviewed its existing regulations, and has taken several steps to enhance their effectiveness and make them more accessible to the business community. We have consolidated the antidumping and countervailing duty regulations (which currently are contained in separate Parts 353 and 355) into a single Part 351. Because, for the most part, antidumping and countervailing duty procedures are identical, the consolidation of those portions of the regulations dealing with procedures will make the regulations easier to use, will make it easier to identify those instances where antidumping and countervailing duty procedures differ, and, by reducing the sheer size of the regulations, will make the regulations less burdensome to the non-expert.

To the extent possible, we have proposed regulations that simplify and streamline the antidumping/countervailing duty process. For example, in the case of administrative reviews, we have added a new provision which allows, under certain circumstances, the Department to cover two review periods in a single review, an approach which should be more efficient for all parties concerned. We have attempted to harmonize, to the extent possible, the rules applicable to both the investigation and review phases of antidumping and countervailing duty proceedings. Because the maintenance of different rules for different phases of antidumping and countervailing duty proceedings merely adds another layer of complexity to an already complex area, we have attempted to eliminate needless differences. For example, in the case of correction of ministerial errors, we generally have made the procedures identical for both investigations and reviews.

In addition, we have developed rules which reduce burdens and facilitate the use of the regulations and administrative procedures. For example, we have consolidated and harmonized the rules governing the submission of information. We have reduced the

[1] Among other things, the URAA amended the antidumping and countervailing duty provisions of the Tariff Act of 1930 to conform those provisions to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (''AD Agreement'') and the Agreement on Subsidies and Countervailing Measures (''SCM Agreement''), both of which are part of the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement'').

[2] On February 22, 1995, the Department published in the Federal Register (60 FR 9802) a notice extending until April 3, 1995, the deadline for filing final comments pursuant to the Advance Notice. In addition, on May 11, 1995, the Department published in the Federal Register (60 FR 25130) a Notice of Interim Regulations and Request for Comments (''Interim Regulations''). The Interim Regulations dealt with certain new or revised procedures resulting from the URAA that would have an immediate impact on the orderly administration of the antidumping and countervailing duty laws. Although the Department invited immediate comments on the Interim Regulations, it allowed the deadline for comments on the Interim Regulations to coincide with the deadline for comments on this proposed rulemaking.

number of copies that parties must file when they make submissions to the Department. We also have included charts which set forth in a single place the various deadlines in antidumping and countervailing duty investigations and reviews.

Further, where possible, we have proposed regulations that supplement, rather than repeat, the statute. We have included narrative explanations that put a particular regulation in context and explain how the regulation fits in the administrative process. We have also sought to use language that will be readily understood by members of the business community.

Finally, where possible, we have tried to use these regulations as a vehicle for enhancing the predictability of the antidumping and countervailing duty laws. We recognize that there are many areas in which the statute provides the Department with discretion, and we have attempted to provide guidance as to how the Department will exercise that discretion. For example, in the regulation that deals with so-called ''price averaging'' in antidumping proceedings, we have attempted to flesh out how the Department will apply this new methodology added to the law by the URAA.

In this regard, however, there are limits as to the amount of detail that the Department can provide in these regulations at this time. In some instances, the statute or the SAA already provides extremely detailed rules, thereby obviating the need for additional regulatory guidance. In other instances, the SAA expressly directs the Department to take a case-by-case approach and to eschew hard-and-fast rules. Finally, in many instances, the URAA has created new procedural and methodological issues on which the Department has little, if any, experience. Absent such experience, the Department lacks a basis for promulgating detailed rules.

Streamlining the regulations is only one part of a larger effort of the Department to simplify its practices. For example, we have been revising our standard questionnaires to make them more ''user friendly'' and efficient. We have made significant changes to our verification procedures in the interest of increased effectiveness. We also will publicly announce the issuance of Policy Bulletins and ensure that they are easily accessible to the public.

Timetable

Certain regulations dealing with the treatment of business proprietary information and administrative protective order procedures were the subject of a separate Notice of Proposed Rulemaking and Request for Public Comment on [Insert date and citation when published] (''APO Rule''). However, the Department intends that, when it publishes final regulations, it will publish a single document that will include the regulations contained in this proposed rule, as well as those regulations contained in the APO Rule.

In addition, the Department intends to publish separately proposed rules regarding countervailing duty methodology. When completed, these rules will be included as subpart E of proposed Part 351.

The issuance of final regulations on this topic is a priority for the Department. After reviewing and analyzing comments on this proposed rule and the APO Rule, the Department intends to issue final regulations as soon as possible.

Comments—In General

The Department wishes to emphasize that the regulations contained in this proposed rule reflect our best judgment at this time regarding the appropriate style and content of antidumping and countervailing duty regulations. We have not foreclosed consideration of any issue raised herein, and we would appreciate greatly public comment and suggestions. In particular, while there are certain matters on which, in our view, the statute and its legislative history give the Department relatively little flexibility, there are other matters where the Department has a much greater degree of discretion in interpreting and applying the statute. With respect to this latter category of matters, the fact that in these proposed regulations the Department has exercised its discretion in a particular manner (or has declined to exercise its discretion at all in the form of regulations) should not be construed as an indication that the Department's position on these matters is immutable. We welcome any and all suggestions.

Therefore, we are very interested in receiving public comment on these proposed regulations. We have found the dialogue that commenced with the Advance Notice to be extremely useful, and we hope and expect that it will continue. We encourage the submission of new comments, as well as the resubmission of old comments if commentators believe that the Department did not fully understand or appreciate a comment the first time around.

Comments—Format and Number of Copies

Each person submitting a comment should include his or her name and address, and give reasons for any recommendation. To facilitate their consideration by the Department, comments regarding these proposed regulations should be submitted in the following format: (1) Number each comment in accordance with the number designated for that issue as indicated in the list of issues set forth below; (2) begin each comment on a separate page; (3) concisely state the issue identified and discussed in the comment; and (4) provide a brief summary of the comment (a maximum of 3 sentences) and label this section ''summary of the comment.''

To simplify the processing and distribution of comments, the Department encourages the submission of documents in electronic form accompanied by an original and two copies in paper form. We request that documents filed in electronic form be on DOS formatted 3.5″ diskettes and prepared in either WordPerfect 5.1 format or a format that the WordPerfect program can convert and import into WordPerfect 5.1. Please submit comments on a separate file on the diskette and labeled by the number designated for that issue based upon the list of issues set forth below.

Comments received on diskette will be made available to the public on the Internet at the following addresses:

FTP://FWUX.FEDWORLD.GOV/PUB/IMPORT or

FTP://FTP.FEDWORLD.GOV/PUB/IMPORT/IMPORT.HTM

In addition, the Department will make comments available to the public on 3.5″ diskettes, with specific instructions for accessing compressed data, at cost, and paper copies will be available for reading and photocopying in the Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. Any questions concerning file formatting, document conversion, access on the Internet, or other file requirements should be addressed to Andrew Lee Beller, Director of Central Records, (202) 482–1248.

Classification of Issues for Comment

Antidumping Issues

11. Comparison Methodology:

a. Viability, third-country sales, intermediate country sales, and tolling;

b. Constructed export price deductions and value-added deductions;

c. Normal value adjustments;

d. Level of trade matching, level of trade adjustments, and constructed export price offset;

12. Start-up

13. Profit and selling, general and administrative expenses in constructed value;

14. Sales below cost of production and constructed value generally;

15. Currency conversion;

16. Price averaging;

17. Anticircumvention;

18. Affiliated persons (address separately for AD and CVD);

19. AD methodology issues other than those outlined above;

Procedural issues

20. Initiation of petitions;

21. Evidence;

22. Facts available;

23. De Minimis (address separately for AD and CVD);

24. Reviews, other than five-year reviews (if specific to AD or CVD, please specify);

25. Five-year reviews and revocation;

26. Repeal of Section 303;

27. Regional industries;

28. Critical circumstances;

29. Simplification;

30. Business proprietary information and administrative protective orders;

31. Ministerial errors;

32. Procedural issues other than those outlined above;

33. Other issues.

Explanation of the Proposed Rules

General Background

Consolidation of Antidumping and Countervailing Duty Regulations

As discussed above, in response to the President's Regulatory Reform Initiative, to reduce the amount of duplicative material in the regulations, the Department has consolidated the antidumping and countervailing duty regulations into a new Part 351, and is removing Parts 353 and 355.

The structure of Part 351 is as follows. Subpart A (Scope and Definitions) is based on existing subpart A of Parts 353 and 355. Among other things, the regulations contained in subpart A deal with general definitions applicable to antidumping and countervailing duty proceedings, the record for such proceedings, and de minimis standards for countervailable subsidies and dumping margins.

Subpart B (Antidumping and Countervailing Duty Procedures) is based on existing subpart B of Parts 353 and 355. As suggested by the title, subpart B deals with the procedural aspects of antidumping and countervailing duty proceedings. Where the procedures for antidumping and countervailing duty proceedings are different, the regulations in subpart B so specify.

Subpart C (Information and Argument) is based on existing subpart C of Parts 353 and 355. Subpart C establishes rules for antidumping and countervailing proceedings regarding such matters as the submission of information, the treatment of proprietary information, the verification of information, and determinations based on the facts available. As noted, certain portions of Subpart C were contained in the APO Notice.

Subpart D (Calculation of Export Price, Constructed Export Price, Fair Value, and Normal Value) is based on existing subpart D of Part 353. Subpart D essentially deals with methodologies for identifying and measure dumping.

Subpart E is designated ''[Reserved],'' but, as explained above, eventually will include rules dealing with countervailing duty methodology. Subpart E does not have a counterpart in existing Part 355, although proposed methodological regulations were published in 1989. 54 FR 23366 (1989).

Subpart F (Cheese Subject to In-Quota Rate of Duty) is based on subpart D of existing Part 355, and implements section 702 of the Trade Agreements Act of 1979, as amended by the URAA.

Explanation of Particular Provisions

Part 351, Subpart A—Scope and Definitions

Subpart A of Part 351 sets forth the scope of Part 351, definitions, and other general matters applicable to antidumping and countervailing duty proceedings.

Section 351.101

Section 351.101 deals with the scope of Part 351, countervailing duty investigations involving imports from a country that is not a Subsidies Agreement country, and the application of antidumping and countervailing duties to importations by the United States Government.

Section 351.102

Section 351.102 sets forth the definition of terms that are used in antidumping and countervailing duty proceedings, but that are not defined in the statute or that warrant clarification. A few definitions merit comment.

Affiliated persons (and affiliated parties) is a new term that replaces prior definitions of ''related persons'' or ''related parties'' (the latter term continues to be governed by section 771(4)(B)). Because the statute unintentionally uses inconsistent terminology, the regulation makes clear that the terms ''affiliated person'' and ''affiliated parties'' have the same meaning. The first sentence of the definition merely refers to the definition of ''affiliated persons'' in section 771(33) of the Act. The second sentence elaborates on the meaning of ''control,'' a key term in the definition of ''affiliated persons'' under section 771(33). It reflects the statements in the SAA, at 838, that one person may be in a position to exercise restraint or direction over another person, and thus have ''control'' over that person, by such means as corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships. The definition of affiliation will also be applied for purposes of ''collapsing'' firms under section 351.401(f).

Several commentators suggested that the Department should specify precise thresholds for these indicia of control in order to provide a greater degree of predictability in the administration of the antidumping law. The Department appreciates the parties' desire for greater guidance concerning the definition of ''control.'' However, the Department does not believe that it is now in a position to establish such thresholds, but instead must develop thresholds, where appropriate, as it gains experience in applying the concept of control. ''Affiliated persons'' is a new statutory term embodying new concepts, and the complexity of the relationships potentially covered by this term mitigate against the issuance of detailed regulations at this time. Moreover, some indicia of the ability to exercise restraint or direction over another party's pricing, cost, or production decisions may not lend themselves to the use of simple, black-and-white thresholds. Therefore, the Department intends to apply this new definition on a case-by-case basis, considering all relevant factors, including the indicia included in the regulatory definition. Mere identification of the presence of one or more of these or other indicia of control does not end our task. We will examine these indicia, in light of business and economic reality, to determine whether they are, in fact, evidence of control. Business and economic reality suggest that these relationships must be significant and not easily replaced. In addition, temporary market power, created by variations in supply and demand conditions, would not suffice.

In addition, some commentators suggested that the Department should define ''control'' as existing only where

there is evidence that control previously had been exercised. We have not adopted this suggestion because the statute, by its use of the phrase ''in a position to exercise restraint or direction,'' defines ''control'' in terms of the *ability* to exercise restraint and direction. The actual exercise of restraint or direction would constitute evidence as to the existence of such *ability*.

Finally, some commentators suggested that the Department establish in the regulations that if one or more of the factors listed in section 771(33) is present, the Department should presume that the parties are affiliated. Other commentators suggested, conversely, that if certain factors are not present, the Department should presume that the parties are not affiliated. With regard to the former suggestion, the statute provides that if any one of the factors in section 771(33) is present, the Department is required to find that persons are affiliated, not merely presume that they are affiliated. With regard to the latter suggestion, the Department is required to consider evidence of any one of the factors. The only factor for which a presumption could be developed is the factor of control. However, as explained above, the Department is not yet in a position to develop such presumptions in these regulations.

Domestic interested party is a new term intended to serve as a convenient, shorthand substitute for the more lengthy phrase used in the statute (''an interested party described in paragraph (C), (D), (E), (F), or (G) of section 771(9) of the Act'') and its existing regulatory counterpart (*e.g.*, ''an interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2''). In addition, the definition of ''domestic interested party'' reflects the creation of a new category of interested party relating to processed agricultural products. Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418, section 1326(c).

The definition of *fair value* is based on existing section 353.42(a). The courts have long recognized that the Secretary possesses additional methodological flexibility in an antidumping investigation, *see, e.g., Southwest Fla. Winter Veg. Growers Ass'n* v. *United States,* 584 F. Supp. 10, 17 (Ct. Int'l Trade 1984), and the definition of fair value is intended to reflect this fact.

With respect to the definition of *ordinary course of trade,* generally, in calculating normal value, the Department must rely on sales and transactions that are in the ordinary course of trade. The first sentence of the definition refers to section 771(15) of the Act. The second sentence draws on the SAA, at 834, to elaborate on this definition, and contains examples of the types of sales or transactions that might be considered as outside the ordinary course of trade.

Some commentators urged the Department to refrain from specifying criteria to be used in determining whether sales or transactions are outside the ordinary course of trade. We agree that it would be inappropriate to include in regulations a detailed list of criteria that the Department might consider, but we also believe that there should be some guidance to the public as to how the Department will analyze ''ordinary course of trade'' issues. Accordingly, as noted above, we have incorporated the relevant language from the SAA, which provides a general description of the standard to be applied.

One commentator suggested that the Department clarify that the addition in the statute of two specific types of transactions deemed to be outside the ordinary course of trade does not affect the criteria the Department traditionally has used to determine whether other types of transactions are outside the ordinary course of trade. The second sentence of the regulatory definition addresses this concern.

Two commentators suggested that the Department identify examples of the types of sales that would be considered as being outside the ordinary course of trade, including sales at aberrational prices. The second sentence of the regulatory definition responds to these comments, although we emphasize that the second sentence is not an exhaustive list of all of the possible types of sales or transactions that might be considered as being outside the ordinary course of trade.

One commentator requested that the Department clarify that below-cost sales and affiliated transactions are not always outside the ordinary course of trade. Further clarification is not needed, because section 771(15) of the Act is clear that not all sales below cost or affiliated transactions will be deemed automatically to be outside the ordinary course of trade. Instead, only sales or transactions that are *disregarded* under the pertinent statutory and regulatory provisions automatically will be deemed to be outside the ordinary course of trade. Of course, the fact that such sales or transactions are not *automatically* considered to be outside the ordinary course of trade does not mean that they never could be considered to be outside the ordinary course of trade. For example, in the case of a below-cost sale of an ''off-spec'' product, even if the sale is not disregarded as a below-cost sale under section 773(b) of the Act, it might be disregarded as not in the ordinary course of trade due to the ''off-spec'' nature of the product.

Rates is used in these regulations as a single shorthand expression for the various terms used in the Act. In addition, the second sentence of the definition clarifies that in an antidumping proceeding involving imports from a nonmarket economy (''NME'') country, the Secretary may calculate a single dumping margin applicable to all exporters and producers. Because the government of an NME country may control export activities, the Department currently presumes that a single rate will apply, but allows individual exporters or producers to receive their own separate rates if they can demonstrate independence from the NME government. *See, e.g.,* Silicon Carbide from the People's Republic of China, 59 FR 22585 (1994).

We have decided not to codify the current presumption in favor of a single rate or the so-called ''separate rates test,'' which outlines the type of information that an exporter or producer must present to obtain a separate rate. Because of the changing conditions in those NME countries most frequently subject to antidumping proceedings, this test (and the assumptions underlying the test) must be allowed to adjust to such changes on a case-by-case basis.

The Department received comments proposing changes to the separate rates test, as well as objections to the proposed changes. Because we are codifying neither the single rate presumption nor the separate rates test, we are not addressing these comments at this time. However, we will take the comments into consideration as our policy in this area evolves.

In addition, the Department is considering whether to promulgate special rules regarding the rates that should be applied to exporters that are not also producers, such as trading companies. In this situation, one alternative would be to calculate a separate rate for each exporter/producer combination, so that the rate to be applied to an exporter would depend upon the producer of the particular merchandise in question. However, before proceeding further, the Department would like to receive additional public comment on this issue.

Respondent interested party is a counterpart to, and is intended to serve

the same function as the term ''domestic interested party.'' A respondent interested party is an interested party described in paragraph (A) or (B) of section 771(9) of the Act.

The term *segment of the proceeding* refers to discrete portions of the proceeding which are separately reviewable under section 516A of the Act. Thus, for example, an investigation and an administrative review are separate segments of a proceeding.

The term *third country* applies in antidumping proceedings, and is intended to be a shorthand expression for the more lengthy statutory phrase ''a country other than the exporting country or the United States.''

Section 351.103

Section 351.103

Section 351.103 describes the location and function of Import Administration's Central Records Unit, provides that documents must be filed with the Central Records Unit, and indicates that the Central Records Unit is responsible for maintaining the service list for each antidumping and countervailing duty proceeding.

Section 351.104

Section 351.104 defines what constitutes the official and public records of an antidumping or countervailing duty proceeding, and prohibits the removal of a record or any portion thereof unless ordered by the Secretary or required by law.

One change warranting discussion is the treatment of material returned by the Department to the submitter. The existing regulations provide that material which is not timely filed or which is returned to the submitter for some other reason shall not be retained in the official record. However, because parties have a right to seek judicial or binational panel review of a decision to reject a submission, as a matter of practice the Department has found it necessary to retain a copy of the returned materials in order to be able to document for the court or binational panel the reasons for the Department's decision to reject the submission. Therefore, paragraph (a)(2) conforms to current practice. Under paragraph (a)(2), the Department will include in the official record material that has been returned to the submitter for reasons other than untimeliness, but the Department will not use such material in its determinations. In the case of a submission rejected as untimely, it is unnecessary to retain a copy of the submission in the official record, because the timeliness/untimeliness of the submission can be documented by means other than retention of the submission.

Section 351.105

Section 351.105 defines the four categories of information applicable to antidumping and countervailing duty proceedings: public, business proprietary, privileged, and classified. One change from the existing regulations is that paragraph (c)(10) provides that the position of domestic producers or workers regarding a petition may be treated as business proprietary information. The new statute requires that the Department make an affirmative determination of domestic industry support for a petition before initiating an antidumping or countervailing duty investigation. Some domestic producers or workers might be reluctant to communicate their positions regarding a petition for fear that their positions might become public information, thereby potentially subjecting them to commercial retaliation. Accordingly, it is essential that domestic producers and workers have the option of communicating their positions to the Department on a confidential basis.

Section 351.106

Section 351.106 deals with the *de minimis* standard, and implements section 703(b)(4) and section 733(b)(3) of the Act. The Department has long applied a *de minimis* standard under which it treated net countervailable subsidies and weighted-average dumping margins that were less than 0.5 percent *ad valorem* (or the equivalent specific rate) as zero. The URAA incorporated the *de minimis* standards of the AD Agreement and the SCM Agreement into the statute, thereby modifying the prior Department standard in antidumping and countervailing duty investigations.

Consistent with the statute and the SAA, paragraph (b)(1) provides that the *de minimis* standards set forth in section 703(b)(4) and section 733(b)(3) of the Act will apply to the investigatory segment of an antidumping or countervailing duty proceeding. Although not restated in paragraph (b)(1), these statutory standards are 2 percent *ad valorem* (or the equivalent specific rate) for antidumping duty investigations, and normally 1 percent *ad valorem* (or the equivalent specific rate) for countervailing duty investigations. However, the *de minimis* standard in a countervailing duty investigation may be 2 percent if the investigated merchandise is from a developing country, or 3 percent if the investigated merchandise is from a ''least developed country'' or from a country which has phased out its export subsidies prior to the deadline established in the SCM Agreement.

Paragraph (b)(2) provides a transition rule for investigations that were initiated under pre-URAA law, suspended, and then later resumed due to a cancellation of the suspension agreement. Paragraph (b)(2) provides that in making a final determination in this situation, the Department will apply the *de minimis* standard which it would have used if the investigation never had been suspended (*i.e.*, the old law standard for investigations of 0.5 percent). However, paragraph (b)(2) has no effect on the standard which the Department may apply in determining that a suspension agreement has been violated or that a violation is ''inadvertent or inconsequential'' within the meaning of section 351.209.

The *de minimis* standards set forth in paragraph (b)(1) will apply only in antidumping or countervailing duty investigations. Paragraph (c)(1) provides that for all other antidumping or countervailing duty determinations, the *de minimis* standard will be 0.5 percent *ad valorem*, the standard set forth in existing sections 353.6 and 355.7. Several commentators suggested that the new *de minimis* standards set forth in paragraph (b)(1) should not be limited to the investigatory segment. The Department has not adopted these suggestions, because, as a matter of domestic law, the statute and the SAA are very clear that the new standards apply only to investigations. Moreover, as a matter of international law, neither the AD Agreement nor the SCM Agreement require that the new standards be applied outside of the investigatory segment.

In this regard, several commentators suggested that the Department should abandon its practice of assessing antidumping duties even when the weighted-average dumping margin was *de minimis*, arguing that (1) this practice is in conflict with the statement in the SAA, at 844, that ''*de minimis* margins are regarded as zero margins,'' and (2) a failure to apply the *de minimis* standard to assessment effectively would negate that standard. The Department agrees that the language of the SAA suggests that the *de minimis* standard should not be applied solely to cash deposits, but to assessment of duties as well. The 0.5 percent *de minimis* standard will apply to the assessment of both antidumping and countervailing duties, but, in the case of antidumping duties, the Department will apply this standard to the

''assessment rate'' calculated under new section 351.212(b)(1). As discussed in more detail below, the Department will calculate the assessment rate on an importer-by-importer basis. In situations where an exporter sells to one importer at dumped prices and to another importer at non-dumped prices, the application of the *de minimis* standard to these importer-specific assessment rates will prevent the dumped transactions from escaping the assessment of duties. With respect to the assessment of countervailing duties, the Department will continue to refrain from assessing duties where the countervailable subsidy rate (or the all-others or country-wide subsidy rate) is *de minimis.*

Subpart B—Antidumping Duty and Countervailing Duty Procedures

Subpart B deals with antidumping duty and countervailing duty procedures and is based on subpart B of Part 353 and Part 355 of the Department's existing regulations.

Section 351.201

Section 351.201 deals with the self-initiation of investigations by the Department, and is based on existing sections 353.11 and 355.11.

Section 351.202

Section 351.202 deals with the contents of, and filing requirements for, antidumping and countervailing duty petitions, and is based on existing sections 353.12 and 355.12.

Paragraph (b) is based on existing sections 353.12(b) and 355.12(b), and retains the standard that a petition need only contain information that is reasonably available to the petitioner. The following changes in paragraph (b) merit comment.

Paragraph (b)(3) is new and reflects the requirement that, before initiating an investigation, the Department must make an affirmative determination that the domestic industry supports the petition. Paragraph (b)(3) does not prescribe a single method by which a petitioner may seek to establish industry support, because the type of information establishing industry support may vary from industry to industry. However, as provided in the SAA, at 861, the petitioner must provide the volume and value of its own production of the domestic like product, as well as the production of that product by each member of the industry, to the extent that such information is reasonably available to the petitioner. In addition, the petitioner must provide information on the total volume and value of U.S. production of the domestic like product, to the extent that such information is reasonably available to the petitioner.

In paragraph (b)(7)(ii)(C)(*1*), which deals with upstream subsidy allegations, the phrase ''Countervailable subsidies, other than an export subsidy'' replaces the phrase in existing § 355.12(b)(8)(i), ''Domestic subsidies described in section 771(5). * * *'' This change reflects the URAA amendment to section 771A of the Act, which, in turn, was due to the URAA's creation of a third category of subsidies, so-called ''import substitution subsidies,'' in section 771(5)(C) of the Act.

In paragraph (b)(10), the phrase ''and causation'' has been added. Petitioners always have been required to submit information indicating that dumped or subsidized imports cause, or threaten to cause, material injury to a domestic industry. The addition of this phrase is intended simply to document this requirement.

Paragraph (b)(11), which deals with critical circumstances allegations, has been revised from existing § 353.12(b)(12) to reflect the statutory amendments regarding the elements necessary for a finding of critical circumstances.

Paragraph (e) deals with amendments to petitions, and is based on existing §§ 353.12(e) and 355.12(e). In the first sentence, ''may'' has been substituted for ''will'' in order to more accurately reflect the discretion that the statute confers on the Department regarding the acceptance of amendments to petitions.

Paragraph (i) is based on existing §§ 353.12(i) and 355.12(j), but has been revised to reference sections 702(b)(4)(B) and 733(b)(3)(B) of the Act, which now deal expressly with the issue of pre-initiation communications between the Department and outside parties. The last sentence of paragraph (i)(1) clarifies that the Department will not consider the filing of a notice of appearance in an antidumping or countervailing duty proceeding to constitute a communication. However, if any communication is appended to a notice of appearance on any subject other than industry support, the Department will consider the entire document to be prematurely filed. In addition, paragraph (i)(2) provides that, in a countervailing duty proceeding, the Department will take the initiative and ''invite'' the government of the exporting country involved for consultations, instead of taking a more passive approach and merely providing an opportunity for consultations.

Several commentators suggested that the Department should solicit comments regarding the petition, such as comments concerning the accuracy of the information contained in the petition. However, the SAA, at 863–64, states that ''the pre-initiation right to comment will be limited solely to the issue of industry support for the petition.'' Thus, the legislative intent was to prohibit the type of communication contemplated by these commentators, and it would contravene this intent if the Department were to allow parties to submit such information by ''requesting'' parties to provide it.

Section 351.203

Section 351.203 deals with determinations regarding the sufficiency of a petition, and implements sections 702(c) and 732(c) of the Act. While based on existing §§ 353.13 and 355.13, § 351.203 contains several changes that reflect amendments to the statute.

Paragraph (b)(1) provides that the Department normally will make the determination regarding the sufficiency of a petition within 20 days of the date on which the petition is filed. In this regard, paragraph (b)(1) repeats the language of the statute with respect to the determination concerning the ''accuracy and adequacy'' of a petition. The Department does not believe that the new statutory standard constitutes a significant departure from past Department practice.

Paragraph (b)(1) reflects the new statutory requirement that the Department examine sources readily available to it in determining the sufficiency of a petition. In the past, it was the Department's practice, in reviewing a petition, to note information that lacked sufficient support or that appeared aberrational, and to ask the petitioner to provide additional information. This practice is consistent with the type of review contemplated by the new statute. Under paragraph (b)(1), the Department will seek information from sources other than the petitioner where: (1) Support for a particular allegation is weak, but better information is unavailable to the petitioner, particularly where the allegation is central to the adequacy of the petition or has a significant impact on the alleged rates, or (2) the information, although supported, appears aberrational and is central to the adequacy of the petition or has a significant impact on the alleged rates. The Department will give the petitioner an opportunity to comment on any such information acquired by the Department.

In this regard, the use of information ''readily available'' is intended to mean information that does not require extensive research by the Department to

obtain. An example of such information would be the replacement of a significant factor of production value in a nonmarket economy antidumping petition with non-proprietary information used in a recently completed investigation or review.

With respect to injury and causation, given the bifurcated responsibilities of the Department and the Commission under the Act, the Department will continue to work in cooperation with Commission staff in evaluating a petition.

Paragraph (b)(2) deals with situations in which the Department extends the period for determining the sufficiency of a petition in order to poll or otherwise determine industry support for a petition. Under paragraph (b)(2), the Department will extend the period only by the amount of time required to gather and analyze information relevant to the question of industry support, and in no case will the Department exceed the maximum period of 40 days authorized by the statute.

Paragraph (c)(2) is new and incorporates the requirements of the SAA, at 867, regarding the distribution of a public version of a petition once the Department has made a determination to initiate an investigation. Normally, the Department will provide a public version of the petition to all known exporters. However, in accordance with the SAA, at 867, where the number of exporters is very large, the Department may provide a copy of the petition to a trade association, with instructions to provide copies to all exporters. Alternatively, the Department may consider this obligation to have been satisfied by the delivery of a public version of the petition to the government of the exporting country under § 351.202(f). In the latter case, the Department will notify the government in question that its obligation has been met through such delivery. In addition, to conserve resources, the Department is looking into the feasibility of making the petition available on computer diskette.

Paragraph (e) is new and deals with the new statutory requirements regarding determinations of industry support for a petition. Paragraph (e)(1) deals with the measurement of domestic production, an important issue in light of the fact that expressions of support or opposition for a petition are weighted according to production. Consistent with the SAA, at 862, paragraph (e)(1) provides that the Department may measure production on the basis of volume or value. In addition, in order to provide a degree of predictability, paragraph (e)(1) also provides that the Department normally will measure production over a twelve-month period. Because in certain cases some period other than twelve months may be more appropriate, the Secretary retains the discretion to prescribe the precise period on a case-by-case basis. However, normally the Secretary will use the most recent twelve-month period for which data are available.

The second sentence of paragraph (e)(1) provides that where the Department is satisfied that actual production data for the relevant period is not available, production levels may be established on the basis of alternative data that the Department determines to be indicative of production levels. For example, for some industries or firms, shipment data may correspond directly with production data, and, thus, be a reliable alternative. However, because of the vast array of industries that appear before it, the Department has not attempted to specify data that would be an acceptable surrogate in all cases for production data.

Paragraph (e)(2) provides that the expression of a position regarding a petition may be treated as business proprietary information under § 351.105(c)(10), discussed above. Several commentators expressed concern that, if parties were required to state publicly their position regarding a petition, they could face commercial retaliation. Therefore, business proprietary treatment may be necessary in order to encourage domestic producers and workers to present their candid views regarding a petition.

Paragraph (e)(3) sets forth rules regarding the weight accorded to the positions of workers and management regarding a petition. Consistent with the SAA, at 862, an opinion expressed by workers will be considered to be of equal weight to an opinion expressed by management. Thus, for example, if a union expressed support for a petition, the Department would consider that support to be equal to the production of all of the firms that employ workers belonging to the union. On the other hand, if management and workers at a particular firm expressed opposite views with respect to a petition, the production of that firm would be treated as representing neither support for, nor opposition to, the petition.

Paragraph (e)(4) reflects sections 702(c)(4)(B) and 734(c)(4)(B) of the Act and the SAA, at 858–859, which allow the Department to disregard, in certain situations, opposition to a petition by certain domestic producers. Paragraph (e)(4)(i) clarifies that a ''related'' domestic producer includes a domestic producer related to a foreign *exporter*, as well as a domestic producer related to a foreign *producer*. In this regard, the Department believes that the statutory requirement that the Department ''shall'' ignore the opposition of related domestic producers ''unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected'' puts the burden of demonstrating such an effect on those producers. Paragraph (e)(4)(ii) clarifies that the Department *may* disregard the views of domestic producers who are also importers of the subject merchandise and domestic producers who are related to such importers within the meaning of section 771(4)(B)(ii) of the Act. In evaluating whether to disregard such producers, the Department may consider the import levels and percentage of ownership common to other members of the domestic industry.

Paragraph (e)(5) deals with the question of industry support where the petition alleges the existence of a regional industry under section 771(4)(C) of the Act. The SAA, at 863, states that industry support shall be assessed ''on the basis of production in the alleged region.'' Consistent with this statement, paragraph (e)(5) provides that, for purposes of assessing industry support, the applicable region will be the region specified in the petition.

Paragraph (e)(6) deals with situations in which the Department may have to poll the industry in order to determine whether the industry supports a petition. Paragraph (e)(6) clarifies that in conducting such a poll, the Department will include in the poll unions, groups of workers, and trade and business associations.

Paragraph (f) interprets sections 702(c)(1)(C) and 732(c)(1)(C) of the Act, which provide for expeditious investigations involving subject merchandise that previously was covered by an order that was revoked or a suspended investigation that was terminated. Paragraph (f) clarifies that these provisions of the Act apply if the revocation or termination occurred under a pre-URAA version of the statute.

Section 351.204

Section 351.204 deals with issues relating to the transactions and persons to be examined in an investigation, voluntary respondents and exclusions. Paragraph (b) deals with the period of time covered by an investigation (''POI''). In a departure from existing § 353.42(b), paragraph (b)(1) provides that the POI in an antidumping investigation normally will be the four most recently completed fiscal quarters (or, in a case involving a nonmarket

economy, the two most recently completed fiscal quarters) as of the month preceding the month in which a petition is filed or in which the Department self-initiated an investigation. The use of fiscal quarters is intended to ease reporting requirements and permit more efficient verification of submitted information. However, paragraph (b)(1) would permit the Department to use an additional or alternative period in appropriate circumstances. Paragraph (b)(2) codifies existing practice regarding the POI in countervailing duty investigations.

Paragraph (c) deals with the selection of the exporters and producers to be examined. In light of section 777A(c) of the Act, paragraph (c) does not retain the 60 and 85 percent thresholds of existing § 353.42(b). Additionally, paragraph (c) permits the Department to decline to examine a particular exporter or producer where all parties agree. Such exporter or producer will be subject to the all-others rate, where such a rate is calculated.

Paragraph (d) deals with the treatment of voluntary respondents under section 782(a) of the Act. Through its reference to section 777A(e)(2)(A) of the Act, paragraph (d)(1) provides that the Department will not consider voluntary respondents in investigations conducted on an aggregate basis under section 777A(e)(2)(B) of the Act. As discussed below, however, in so-called ''aggregate cases,'' the Department will consider requests for exclusion under paragraph (e)(3) by individual exporters or producers. Paragraph (d)(2) provides that if the Department accepts a voluntary response, the voluntary respondent will be subject to the same requirements as those firms initially selected by the Department for individual examination, including, where applicable, the use of the facts available. The purpose of this provision is to ensure that the Department is not burdened with frivolous voluntary responses from parties that wish to see the preliminary all-others rate before deciding whether to withdraw their request to be investigated. Finally, paragraph (d)(3) provides for the exclusion of voluntary respondents from the calculation of the all-others rate. The purpose of this provision is to prevent manipulation and to maintain the integrity of the all-others rate.

Paragraph (e) deals with exclusions and constitutes a significant change from prior practice, as reflected in §§ 353.14 and 355.14. With the exception of countervailing duty investigations conducted on an aggregate basis, paragraph (e)(1) eliminates the various certification requirements of the prior regulations and, instead, provides that any exporter or producer that is individually examined and that receives an individual weighted-average dumping margin or countervailable subsidy rate of zero or *de minimis* will be excluded from an order.

In this regard, the Department is considering whether there should be separate exclusion rules for firms, such as trading companies, that sell, but do not produce, subject merchandise. For example, one alternative would be to limit the exclusion of a non-producing exporter to subject merchandise produced by those producers that supplied the exporter during the period of investigation. However, before issuing final rules, the Department is interested in receiving additional public comments regarding this issue.

Paragraph (e)(2) clarifies that, while no exporter will be excluded from an investigation as a result of a preliminary determination, those found to have zero or *de minimis* rates will not be subject to provisional measures.

Paragraph (e)(3) explains that, where a countervailing duty investigation is conducted on an aggregate basis under section 777A(e)(2)(B) of the Act, individual responses will be accepted for purposes of establishing exclusion. However, consistent with section 782(a)(2) of the Act, the number of such responses must not be so large that individual examination of such exporters or producers would be unduly burdensome and inhibit the timely completion of the investigation. Responses submitted in support of a request for exclusion must include a certification that the party received zero or *de minimis* net countervailable subsidies and a calculation demonstrating the basis for that conclusion. Additionally, because the countervailable subsidy rate for a reseller normally is based on the producer's rate, an exporter that is not the producer of subject merchandise must provide a certification from the suppliers or producers of the merchandise that the exporter sold during the period of investigation, stating that those persons also received zero or *de minimis* net countervailable subsidies. Finally, an exporter or producer seeking exclusion also must submit a certification from the government that the government did not provide the firm with net countervailable subsidies above *de minimis.* An exporter or producer requesting exclusion may be required to provide more detailed information regarding the nature and amount of any countervailable subsidies received. If the Department determines that an exporter or producer seeking exclusion has received net countervailable subsidies above *de minimis*, that firm will not be excluded from a countervailing duty order and will be subject to the country-wide subsidy rate.

Section 351.205

Section 351.205 deals with preliminary antidumping and countervailing duty determinations, and is based on existing sections 353.15 and 355.15.

Section 351.206

Section 351.206 deals with critical circumstances findings, and is little changed from existing §§ 353.16 and 355.15. However, the reader should note that the statutory prerequisites for a finding of critical circumstances have changed. *See* sections 705(a)(2) and 735(a)(3) of the Act.

Section 351.207

Section 351.207 deals with the termination of investigations, something that typically occurs through a withdrawal of the petition. Section 351.207 is based on existing §§ 353.17 and 355.17, and the principal changes are: (1) the last sentence of paragraph (b)(1) contains a cross-reference to the statutory and regulatory provisions that deal with the treatment in a subsequent investigation of records compiled in an investigation in which the petition is withdrawn; and (2) paragraph (c) references the Department's authority, pursuant to section 782(h)(1) of the Act, to terminate an investigation due to lack of interest. As the SAA, at 864, makes clear, the Department's authority to carry out a no-interest termination is unaffected by those provisions of the statute prohibiting the post-initiation reconsideration of industry support for a petition.

Section 351.208

Section 351.208 deals with suspension agreements and suspended investigations, and is based on existing §§ 353.18 and 355.18. The most significant changes reflected in § 351.208 relate to the new statutory provisions regarding suspension agreements in regional industry cases (paragraphs (f)(1)(ii), (f)(2)(ii), and (f)(3)). In this regard, paragraphs (f)(1)(ii) and (f)(2)(ii) address situations in which the Commission finds a regional industry in its final determination, but not in its preliminary determination. If the Commission finds a regional industry in its preliminary determination, the Secretary still could accept a regional industry suspension

agreement under section 704(l) and section 734(m) of the Act, but the procedures and deadlines in paragraphs (f)(1)(i) and (f)(2)(i) would apply. In addition, it should be noted that paragraph (f)(2) lists some, but not all, of the procedural steps required by the Act with respect to the suspension of an investigation.

In addition, the deadlines for initialling and signing suspension agreements have been advanced. Under current practice, consideration of a suspension agreement and briefing and drafting of comments in preparation for a final determination occur simultaneously, thereby creating an enormous burden on parties and on the Department. The proposed rule allows parties to propose a suspension agreement within 15 days of a preliminary antidumping determination, or within 5 days of a preliminary countervailing duty determination. In an antidumping investigation, parties may also request an extension of the final determination. An extension will not affect the time allotted for consideration of a suspension agreement, only the time allotted for preparation of the final determination. In a countervailing duty investigation, the period for consideration of a suspension agreement would be expedited because no extension of the final determination is possible, unless the investigation is aligned with a companion antidumping investigation or an upstream investigation is initiated. While the suspension agreement is under consideration, the briefing and hearing schedule would be postponed. The proposed timeline will reduce burdens on all parties by eliminating the need to file case briefs, rebuttal briefs, and to participate in a hearing, if a suspension agreement is accepted.

Section 351.209

Section 351.209 deals with the violation of suspension agreements. Although § 351.209 is largely identical to existing §§ 353.19 and 355.19, there are a few changes worth noting. First, in several places, the term ''a signatory'' has been substituted for ''exporters.'' This change from the plural to the singular is intended to clarify that the actions of a single signatory can constitute a violation of a suspension agreement.

Second, paragraph (b)(2) provides that if, as a result of a violation, the Department resumes a suspended investigation that had not been completed under sections 704(g) or 734(g) of the Act, the Department may update previously submitted information, where appropriate, for purposes of making a final determination. For example, if a considerable amount of time has passed since the POI of the original investigation or if there have been significant changes in market circumstances, it might be inappropriate to make a final determination on the basis of dated information. This issue has arisen in prior cases, and paragraph (b)(2) is intended to clarify the Department's authority to seek updated information in these types of situations.

Section 351.210

Section 351.210 deals with final determinations in investigations, and is little changed from existing §§ 353.20 and 355.20. One change worth noting is that because the URAA eliminated the preference for a country-wide rate in countervailing duty investigations, § 351.210 lacks a provision comparable to existing § 355.20(d).

Section 351.211

Section 351.211 deals with the issuance of antidumping duty and countervailing duty orders, and is based on existing §§ 353.21 and 355.21. The most significant new provision is paragraph (c), which implements sections 706(c) and 736(d) of the Act regarding the coverage of orders issued in investigations where the Commission has identified a regional industry. Paragraph (c) establishes procedures by which an exporter or producer that did not supply the region during the POI may be excepted from the assessment of duties.

Section 351.212

Section 351.212 is new, and deals with matters related to the assessment of antidumping and countervailing duties. Although portions of § 351.212 are based on provisions of the Department's current regulations, other portions are entirely new.

Paragraph (b) deals with the assessment of duties as the result of a review. Paragraph (b)(1) establishes rules regarding the assessment of antidumping duties. By way of background, when the Department assumed responsibility for the administration of the antidumping law in 1980, it inherited from its predecessor, the U.S. Customs Service, the practice of issuing assessment instructions in the form of so-called ''master lists.'' Typically, a master list would list each entry (or each shipment). Over time, the Department encountered numerous problems in creating master lists. For example, because dumping margins are calculated on the basis of sales, the creation of a master list requires the ability to link each U.S. sale to a corresponding customs entry. Frequently, this is an impractical task for both the Department and exporters and importers. For example, if sales are made after importation, the U.S. affiliate (or consignee) of the foreign exporter usually will not maintain records that link each sale to an unaffiliated customer to a corresponding customs entry. Similarly, when the Department examines sales by a foreign producer to intermediaries outside the United States, such as foreign trading companies, the producer normally does not have the information that would allow the Department to identify the specific customs entries that correspond to specific sales to the intermediaries.

This inability to link sales to entries also has prevented the Department from conducting reviews on the basis of merchandise entered during a particular review period. Where this type of problem exists, the Department has been forced to define review periods on the basis of shipments or sales during the period.

One method of dealing with this problem would be to require respondents to maintain records in such a way that sales can be linked to entries. However, such a requirement would impose a burden on respondents that would be disproportionate to the minor gains in the precision of duty assessments, and simply would render an already complex process even more complex. Therefore, commercial reality and the need to streamline the administration of the antidumping law have caused the Department to rely on the use of duty assessment rates instead of entry-by-entry master lists. In the interests of clarity and predictability, we believe that this practice should be codified in the regulations.

With respect to the use of duty assessment rates, the Department believes that, except in unusual situations, we should assess duties on subject merchandise entered during each review period. Therefore, paragraph (b)(1) provides that the Department normally will calculate a duty assessment rate based on sales reviewed, and will apply those rates to entries made during the review period. In all cases, this will result in the assessment of duties on merchandise entered during the review period. To the extent possible, these assessment rates will be specific to each importer, because the amount of duties assessed should correspond to the degree of dumping reflected in the price paid by each importer. Where possible, we will

base assessment rates on the entered value of the sales examined in the review. If entered values are not available, it may be necessary to use unit rates.

For example, assume that a U.S. importer (affiliated with the foreign exporter) sells after importation two different products, A and B, both of which are subject to an antidumping order. The Department reviews sales totalling 100 tons of product A and 200 tons of product B. The entered value of the merchandise during the review period was $40 per ton for product A and $30 per ton for product B. The absolute dumping margin found for all of the sales was $100. In this example, the assessment rate would be 10 percent [($100/($40x100 + $30x100) = 10 percent]. Put differently, it is the rate of dumping reflected in these sales relative to the entered value of the merchandise. We would collect antidumping duties on merchandise entered during the review period by applying this 10 percent rate to the entered value of each of those entries.

The Department believes that, except in unusual situations, it should not abandon the objective of assessing duties on the basis of entries, even when it is not possible to precisely link sales to entries. In most antidumping proceedings, it is necessary to assess duties on the basis of entries in order to maintain continuity with periods of no review and to avoid the over- or undercollection of duties. Moreover, because we typically cannot link sales to entries, we currently have no means of collecting precisely an amount of duties equal to the total absolute dumping margin calculated for the sale reviewed. This would require exact knowledge, for each importer, as to the total quantity or value of unliquidated entries during the review period, information that often is difficult or impossible to obtain.

The Department intends to continue to use master lists in situations where there are few shipments, and to assess duties on the basis of merchandise sold or shipped if warranted by the pattern of imports and sales. We also will evaluate the effect of reconciliation entries, which are authorized by the Customs Modernization Act, on the duty assessment process, and we may collect duties on the basis of merchandise sold or shipped if a reconciliation entry is used.

Paragraph (b)(2) deals with the assessment of countervailing duties, and is consistent with current practice.

Paragraph (c) deals with the automatic assessment of duties in situations where an administrative review of an order under § 351.213 is not requested, and is based on existing §§ 353.22(e) and 355.22(g). Paragraph (c)(3) is new, and provides that automatic assessment will not occur, even though an administrative review is not requested, if the merchandise in question is subject to a new shipper review under § 351.214 or an expedited antidumping review under § 351.215.

Paragraph (d) deals with the provisional measures deposit cap, and is based on existing §§ 353.23 and 355.23. The language of paragraph (d) has been revised to reflect the new concept of assessment rates in paragraph (b). Finally, paragraph (e) deals with interest on over- and underpayments of estimated duties, and is little changed from existing §§ 353.24 and 355.24.

Section 351.213

Section 351.213 deals with administrative reviews under section 751(a)(1) of the Act. Section 351.213 is based largely on existing §§ 353.22 and 355.22, but certain changes are worth noting.

Paragraph (c) establishes a new procedure by which the Secretary, upon request, may defer the initiation of an administrative review for one year. The purpose of this provision is to simplify the review process and reduce the burden on all concerned by allowing the Department, in effect, to cover two review periods in a single review. However, the Secretary will not defer an administrative review if one of the parties identified in the regulation objects to deferral.

Paragraph (d) deals with the rescission (previously referred to as ''termination'') of administrative reviews, and clarifies that the Department may rescind a review that the Secretary self-initiated or in which there are no entries, exports, or sales to be reviewed.

Paragraph (e)(2) codifies existing practice regarding the period of review for countervailing duty administrative reviews, and is similar, but not identical, to the period covered by investigations under § 351.204(b)(2).

Paragraph (f) deals with the treatment of voluntary respondents in administrative reviews, and provides that voluntary respondents will be treated in the same manner as in an investigation.

Paragraph (g) cross-references new § 351.221, a new provision which consolidates in one place the procedures to be applied in the different types of reviews provided for by the Act.

Paragraph (h) sets forth deadlines for issuing preliminary and final results of administrative reviews, and also provides for extensions to those deadlines.

Paragraph (j) establishes procedures for the analysis of the absorption of antidumping duties under section 751(a)(4) of the Act. The Department will make a determination regarding duty absorption in administrative reviews initiated in the second and fourth years after the issuance of an antidumping order. In addition, if an order remains in existence following a sunset review under section 751(c) of the Act, the Department will make a duty absorption determination in the second and fourth years following the Department's determination in the sunset review. However, the Department will make a determination regarding duty absorption only if a request for such a determination is made within 30 days of the initiation of the administrative review. For transition orders, reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year.

Paragraph (k) deals with administrative reviews of countervailing duty orders that are conducted on an aggregate basis. Paragraph (k)(1) establishes a procedure under which an individual exporter or producer may seek a zero rate. This procedure is modeled on § 351.204(e)(3), discussed above, which deals with requests for exclusion in countervailing duty investigations conducted on an aggregate basis. As with requests for exclusion, the Secretary will consider requests for zero rates to the extent practicable. Paragraph (k)(2) provides that, where an administrative review of a countervailing duty order is conducted on an aggregate basis, the country-wide rate calculated in such a review, if any, will supersede, for cash-deposit purposes, rates calculated in a prior segment of the proceeding, with the exception of zero rates determined under paragraph (k)(1).

Section 351.214

Section 351.214 sets forth the procedures for conducting new shipper reviews, a new procedure contained in section 751(a)(2) of the Act. This section also establishes a procedure for conducting an expedited review of exporters that are not individually examined in countervailing duty investigations. Certain features of § 351.214 merit discussion.

Paragraph (b) sets forth the procedures for requesting a new shipper review. Under paragraphs (b)(1), (b)(2), and (b)(3), the requester must provide certifications demonstrating that the

party is a *bona fide* new shipper. The purpose of these certifications is to ensure that new shipper status is not achieved through mere restructuring of corporate organizations or channels of distribution. In accordance with the SAA, at 875, this provision also makes clear that parties will not be granted new shipper status merely because they were not individually examined during the investigation.

Paragraph (b)(4) requires the requesting party to document the entry date of the shipment which establishes the basis for the new shipper review, as well as the date of the first sale to an unaffiliated customer in the United States. If the requesting party cannot provide such information it may, in the alternative, provide documentation establishing the date on which the merchandise was shipped. The date of first entry (or the date of shipment) will be used to establish the timeliness of the request for a new shipper review under § 351.214(c).

In the case of a countervailing duty order, paragraph (b)(5) requires the requesting party to certify that it has informed the government of the exporting country that the government will be required to provide a full questionnaire response. This requirement is intended to put parties on notice that, in a review of a countervailing duty order, the party will have to have the cooperation of the government. By requiring at the outset a certification that the government has been put on notice of the review, the Department hopes to minimize situations in which it will be forced to rely upon the facts available.

Paragraph (c) clarifies that a request for a new shipper review must be submitted no later than one year after the date of the first shipment to the United States. By setting this deadline, the Department clarifies that the statute is intended to provide a new shipper an opportunity to obtain its own rate on an expedited basis, and not to permit shippers to request expedited reviews long after the first shipment has taken place.

Paragraph (d) deals with the time for initiating new shipper reviews, and provides an illustrative example. Paragraph (f) permits the Secretary to rescind a new shipper review upon the request of the new shipper made within 60 days of the initiation of the review. In addition, the Secretary may rescind a new shipper review if the Secretary concludes that: (i) There were no entries, exports, or sales (as appropriate) during the standard period of review for a new shipper review, and (ii) an expansion of the standard period to include entries, exports, or sales would prevent the timely completion of the new shipper review. This might occur, for example, in an antidumping proceeding where a new shipper exports merchandise to an affiliated U.S. importer, but the importer does not resell the merchandise to an unaffiliated U.S. purchaser within the standard period of review. Although the Secretary would have the discretion to expand the period of review to cover a subsequent resale, if the merchandise has not been resold within a reasonable period of time following the end of the standard review period, the Secretary could rescind the new shipper review. The new shipper still would have the option of requesting a new shipper review if and when the merchandise was resold.

Paragraph (g) deals with the period of review. New shipper reviews in antidumping proceedings normally will cover a period of six months or one year, depending on whether the review was initiated following the anniversary month or the semiannual anniversary month. In a countervailing duty proceeding, the period of review will be the same as in an administrative review. However, because of the novelty of the new shipper review procedure, the period of review may change as the Department gains experience in this area. It is the Department's intent to apply paragraph (g) in a flexible manner so that the Department may expand the standard period of review to cover the first exportation of a new shipper, provided that any such expansion of the period of review does not prevent the completion of the review within the statutory time limits.

Because new shipper reviews may be requested at any time, but are initiated only at six-month intervals, the Department may find that the Customs Service has liquidated the relevant entries based upon instructions issued under the automatic assessment provisions of § 351.212(c). Although the Department may be forced to review entries that already have been liquidated, this should not be interpreted as a change in the Department's general policy of refusing to conduct administrative reviews of liquidated entries.

Paragraph (h) cross-references section 351.221, which, as discussed above, contains procedural rules for the various types of reviews conducted by the Department. Here, we should note that under § 351.221(b)(6), the results of review will form the basis for the assessment of duties on unliquidated entries. Some commentators have argued that the Department should exclude a new shipper from an order if the Department determines in a new shipper review a zero or *de minimis* rate. The Department has not adopted this suggestion for the following reasons. Section 751(a)(2) implements obligations arising under both the AD Agreement and the SCM Agreement, but during the Uruguay Round negotiations, the subject of new shippers was negotiated primarily in connection with the AD Agreement. The negotiating history of the AD Agreement indicates that while a proposal was made regarding the exclusion from an order of new shippers found to be selling at non-dumped prices, this proposal was not included in the final AD Agreement. Thus, the purpose of the new shipper review procedure merely was to provide an expedited review of imports already considered to be subject to an order. We note that we invite comment on our proposal to change the rules governing revocation, § 351.222, and that these rules apply to new shippers.

Finally, paragraph (j) addresses situations in which a new shipper may be subject to more than one review or more than one request for review. For example, a new shipper might request a new shipper review notwithstanding the fact that the new shipper is already subject to an administrative review under § 351.213. To minimize the potential for confusion and to conserve administrative resources, paragraph (j) permits the Department to terminate a review, in whole or in part, including a new shipper review. Paragraph (j) also would permit the Department to conduct an administrative review under § 351.213 of less than the normal one year review period. Paragraph (j) also permits the Department to conduct a new shipper review concurrently with an administrative review under section 351.213, if the new shipper is willing to waive the time limits for a new shipper review set forth in paragraph (i). If a new shipper waives the time limits, all other provisions of § 351.214, including the bonding provision of paragraph (e), will continue to apply for the duration of the new shipper review.

To implement Article 19.3 of the SCM Agreement, paragraph (k) expands the new shipper review procedure to cover exporters that were not individually examined in a countervailing duty investigation where the Secretary limited the investigation under section 777A(e)(2)(A) of the Act. There are a few important differences between this procedure and the procedure for a regular new shipper review. First, to allow the Department to manage its limited resources efficiently, a noninvestigated exporter desiring an

expedited review must file a request within 30 days of the publication of a countervailing duty order. This is a reasonable time limit, because a noninvestigated exporter will be aware of its status long before an order is published. Second, because the noninvestigated exporter does not qualify as a new shipper, the Secretary will not permit a bond to be substituted for a cash deposit of estimated duties.

Section 351.215

Section 351.215 deals with expedited antidumping reviews under section 736(c) of the Act. But for stylistic and formatting changes, section 351.215 is unchanged from existing § 353.22(g).

Section 351.216

Section 351.216 deals with changed circumstances reviews under section 751(b) of the Act. Again, except for stylistic and formatting changes, this provision is unchanged from existing §§ 353.22(f) and 355.22(h).

Section 351.217

Section 351.217 deals with reviews under section 751(g) of the Act. Section 751(g) establishes a mechanism for reviewing a countervailing duty order to take account of the outcome of a subsidies-related WTO dispute.

Section 351.218

Section 351.218 deals with sunset reviews under section 751(c) of the Act. In accordance with section 751(c), paragraph (c) provides that the Department will publish a notice of initiation no later than 30 days before the fifth anniversary date of an order or suspended investigation. As described in the SAA, at 882, the Department may initiate a sunset review at an earlier date, at the request of a domestic interested party. The purpose of this provision is to enable the Commission to conduct a cumulative injury analysis. However, if the Department determines that the party requesting an early sunset review is related to a foreign exporter or producer or is an importer (or is related to an importer) within the meaning of section 771(4)(B) of the Act and § 351.203(e)(4), the Department may decline such a request.

With respect to sunset reviews, the Department would like to remind parties that section 751(c)(3)(A) of the Act requires the Department to make a final sunset determination within 90 days of the notice of initiation if no domestic interested party responds to the notice of initiation. Therefore, once the Department publishes a notice of initiation of a sunset review, parties will receive no further notice of the review unless and until they provide such information.

Section 351.219

Section 351.219 deals with section 753 of the Act. In general, section 753 of the Act provides a mechanism for providing an injury test in the case of countervailing duty orders that (i) pertain to a Subsidies Agreement country, and (ii) were issued under section 303 of the Act without an injury test. Under section 753, upon request, the Commission will conduct an investigation to determine if a U.S. industry is likely to be materially injured if a countervailing duty order is revoked. If the Commission's determination is negative, or if no request for an investigation is received, the Department will revoke the order.

Section 351.219 differs from § 355.40, which the Department issued as an interim-final rule on May 11, 1995 (60 FR 25130, 25139). The principal change is that we have eliminated provisions that merely repeated the language of section 753. However, consistent with the SAA, at 942–943, paragraph (b) continues to provide that the Secretary will notify domestic interested parties as soon as possible after the opportunity for requesting a section 753 investigation arises.

Section 351.220

Section 351.220 deals with reviews conducted at the request of the President under section 762 of the Act. But for stylistic and formatting changes, § 351.220 is unchanged from existing § 355.22(i).

Section 351.221

Section 351.221 consolidates in one section the procedural actions that the Department will take with respect to the various types of reviews provided for under the Act. Paragraph (b) is in the nature of a generic provision, and is based on existing §§ 353.22(c) and 355.22(c). Paragraph (c) contains special rules for particular types of reviews.

Section 351.222

Section 351.222 deals with the revocation of orders and termination of suspended investigations.

Paragraph (b), which deals with revocation or termination based on the absence of dumping, is substantively unchanged from existing § 353.25(a). Paragraph (c) retains the current requirements (found in § 355.25(a)) for revocation or termination based on the absence of countervailable subsidies. As provided in § 351.213(e) and § 351.204(d), the Department generally will not consider voluntary respondents in an administrative review of a countervailing duty order that is conducted on an aggregate basis under section 777A(e)(2)(B) of the Act. However, the requirements for a company-specific revocation set forth in paragraph (c)(3) may be satisfied in a proceeding conducted on an aggregate basis by the submission of certifications that the company received zero or *de minimis* countervailable subsidies. See § 351.222(e)(2)(iii). As in the case of exclusions, the Department is considering whether there should be separate revocation rules for firms, such as trading companies, that sell, but do not produce, subject merchandise. One alternative would be to limit the revocation of a non-producing exporter to subject merchandise produced by those producers that supplied the exporter prior to revocation. However, before issuing final rules, the Department is interested in receiving additional public comments regarding this issue.

Under the current regulations, a company must have been the subject of three (or, in a countervailing duty proceeding, five) consecutive administrative reviews in order to qualify for a company-specific revocation. One consequence of this policy is that it forces companies to request administrative reviews that they might not otherwise request, thereby needlessly adding to the Department's workload.

In an attempt to reduce the administrative burden on parties and Department personnel, while at the same time maintaining our current policy that there must be a consistent pattern of no dumping or subsidization before we will consider revocation, paragraph (d) eliminates the requirement that the Department actually conduct a review in each of the three (or five) years before revocation. Instead, the Department will require that reviews of the first and last years of the three- or five-year period demonstrate an absence of dumping or subsidization. In other words, the Department would be able to revoke an order (or terminate a suspended investigation), despite the fact that an administrative review may not have been conducted for one or more of the intervening years, as long as the cash deposit rate in the end review years was zero. The Department reasons that if a review of the first year establishes an absence of dumping or countervailable subsidies, the lack of a request for reviews of subsequent years by domestic interested parties is sufficient to establish the continued absence of dumping or countervailable subsidies

during those years. However, to ensure that the lack of requests for reviews is not simply due to the absence of imports in commercial quantities, the Department will require a certification from a company seeking revocation (or each signatory in the case of a suspended investigation) that it sold subject merchandise to the United States in commercial quantities in each of the three (or five) years, including any unreviewed intervening years. The Department will establish whether sales were made in commercial quantities based upon examination of the normal sizes of sales by the producer/exporter and other producers of subject merchandise. In deciding commercial quantities, the Department will consider natural disasters and other unusual occurrences which might affect the potential for production or exportation.

Paragraph (e) retains the procedures currently found in §§ 353.25(b) and 355.25(b) regarding requests for revocation and termination based on the results of administrative reviews. One change is that in a countervailing duty proceeding, paragraph (e)(2)(iii) requires that, along with the certification that the person has received no net countervailable subsidy for five consecutive years, the person must submit a calculation demonstrating the basis for the conclusion that the person received no net countervailable subsidy in the fifth year. This calculation should be based on methodologies used by the Department in the most recently completed segment of a proceeding. The Department will review this calculation, and will notify the person if the Department identifies a methodological or other error, the correction of which may reveal a net countervailable subsidy that is above de minimis for that year. In addition, to conform to the changes in paragraph (d) regarding unreviewed intervening years, the requester must provide certifications regarding sales to the United States in commercial quantities.

Paragraph (g) deals with revocations and terminations based on changed circumstances reviews, and is almost identical to prior sections 353.25(d) and 355.25(d). The one substantive change is that, in light of the new sunset review procedure under section 751(c) of the Act, we have eliminated the prior ''sunset revocation'' procedure based on the absence of requests for administrative reviews.

Paragraphs (h) through (i) deal with revocations and terminations based on other review procedures, such as changed circumstances reviews by the Commission and sunset reviews by the Department and the Commission.

Paragraph (m) is a transition rule designed to account for the fact that the URAA altered the substantive rules for determining when merchandise is fairly traded under the Act. Essentially, for purposes of satisfying the three- and five-year requirements for revocation or termination, paragraph (m) gives a company or foreign government credit for the absence of dumping or countervailable subsidies during years to which the pre-URAA version of the Act applies. For example, in the case of a particular company, if, under the transition rules of section 291(a)(2) of the URAA, there were two administrative reviews showing two years of no sales at less than foreign market value (under the pre-URAA version of the Act) and one year of no sales at less than normal value (under the Act as amended by the URAA), the company would be deemed to have satisfied the three-year requirement for revocation.

Section 351.223

Section 351.223 deals with the procedures for requesting and initiating a downstream product monitoring program under section 780 of the Act. There are no substantive changes from existing § 353.27.

Section 351.224

Section 351.224 deals with the disclosure of calculations and procedures for the correction of ministerial errors. Section 351.224 is based on existing §§ 353.20(e), 355.20(h), 353.28, and 355.28, and on proposed regulations concerning the correction of significant ministerial errors in preliminary determinations in antidumping and countervailing duty investigations (see Notice of Proposed Rulemaking and Request for Public Comments, 57 FR 1131 (January 10, 1992) (Proposed Regulations)). However, section 351.224 contains numerous changes intended to streamline the disclosure and ministerial error correction process.

The principal goal of these changes is to provide for the issuance of a correction notice normally within 30 days after the date of public announcement of the preliminary or final determination or final results of review. The date of public announcement is the date on which the signed determination or results of review is first made available to interested parties. This goal is consistent with the proposal from a number of commentators that the Department should respond to ministerial error allegations prior to the date when a summons must be filed with the Court of International Trade or when a notice of intent to commence panel review must be filed with the NAFTA Secretariat. This 30-day framework is intended to avert needless litigation by allowing parties sufficient time to review the correction notice before the litigation deadline arrives.

Paragraph (b), which deals with disclosure, has been revised from the existing and proposed regulations to eliminate the requirement that a party to the proceeding request disclosure. Instead, paragraph (b) provides for automatic disclosure normally within five days after the date of public announcement of the preliminary or final determination or final results of review. In this context, disclosure refers both to the release of disclosure documents and to the holding of a disclosure meeting. In this regard, because paragraph (c)(1) provides that comments concerning ministerial errors must be filed within five days after the earlier of the date of the release of the disclosure documents or the date of the disclosure meeting, parties are advised to schedule disclosure meetings as early as possible. One commentator proposed that there be at least five days between the release of disclosure materials and the disclosure meeting. Due to the time constraints of the 30-day framework, however, the Department normally will not be able to extend the disclosure and comment process.

Paragraph (b) also provides for disclosure normally within 10 days after the date of public announcement of the preliminary results of review. Although, as discussed below, the Department will not amend a preliminary results of review to correct a ministerial error, the Department believes that prompt disclosure will assist parties in the preparation of any case brief and in determining whether to request a hearing. In either an investigation or a review, parties that do not want to receive disclosure materials or to have a disclosure meeting should inform the Department promptly.

A number of commentators proposed that as part of disclosure, the Department provide the computer program on diskette. The Department intends to accommodate this proposal, where practicable, upon request from a party. The Department may charge a nominal fee for providing a copy of the computer program on diskette.

We also should note that paragraph (b) provides for disclosure only if the Secretary has performed calculations. For example, in certain types of reviews, such as a sunset review or an Article 4/Article 7 review, the Department may not calculate dumping margins or

countervailable subsidy rates, but instead might only make a judgment as to whether an order should remain in effect. In such instances, the final results of review would contain a full statement of the Department's legal and factual conclusions, and there would be nothing further to ''disclose.''

Paragraph (c)(2) establishes the time limits for filing comments concerning ministerial errors. Specifically, a party to the proceeding must file comments not later than five days after the earlier of (i) the date of release of disclosure documents to that party, or (ii) the date of the disclosure meeting with that party. With respect to a preliminary determination in an investigation, a party may submit only comments concerning a significant ministerial error as defined in paragraph (g). With respect to a final determination in an investigation or a final results of review, a party may submit comments concerning any ministerial error as defined in paragraph (f). One commentator proposed that the Department establish regulations for the correction of ministerial errors made in a preliminary results of review. The Department does not believe that such regulations would be appropriate. Unlike a preliminary determination in an investigation, which may result in the suspension of liquidation and the imposition of provisional measures, a preliminary results of review has no immediate legal consequence. As a result, a more judicious use of Department resources is to correct any ministerial errors made in a preliminary results of review in the final results. See Proposed Regulations at 1132.

Paragraph (c)(3) establishes the time limits for filing replies to comments. Specifically, replies to comments must be filed not later than five days after the date on which such comments are made. One commentator suggested eliminating replies to comments because alleged ministerial errors should be indisputable. While it is often the case that a ministerial error is obvious, there are instances where the ''ministerial'' nature of an error or the impact of an error is in dispute. In these instances, parties' replies aid the Department in analyzing the allegation. There is an exception for replies to comments in connection with a significant ministerial error in a preliminary determination. Because of greater time constraints due, in part, to the fact that Department personnel conduct verification soon after the announcement of a preliminary determination, the Department will not consider replies to comments in a preliminary determination. Any reply that a party wishes to make should be included in that party's case brief so that the Department may address the reply in its final determination.

Paragraph (c)(4) deals with the extension of the time limit for filing comments concerning a ministerial error in a final determination or a final results of review. A party may file a written request showing good cause for extension within three days after the date of the public announcement of a final determination or a final results of review. The Department will not grant an extension of the time limit for filing comments on a significant ministerial error in a preliminary determination. Although the Department normally has 30 days in which to announce the issuance of a correction notice, the time frame for analyzing significant ministerial errors allegations in a preliminary determination is, as explained above, more constrained. As noted previously, a party has the opportunity to raise a ministerial error allegation in its case brief for consideration in the final determination or final results of review.

Some commentators suggested that domestic interested parties be allowed more time to file comments on ministerial errors because these parties have more material to review than respondents. The Department does not believe that it is appropriate to distinguish between domestic interested parties and respondents in this fashion. However, the fact that a domestic interested party intends to file ministerial error comments on a large number of respondents may provide good cause for an extension of the time to file comments. The Department will make such extension decisions on a case-by-case basis, taking into consideration the intended 30-day framework for addressing ministerial error allegations.

Paragraph (d) deals with the contents of comments and replies. In order for the Department to complete its analysis of alleged ministerial errors within the 30-day framework, comments must reference specific evidence in the official record to explain the alleged ministerial error and must present the appropriate correction. In addition, comments concerning an alleged significant ministerial error in a preliminary determination must demonstrate how the alleged ministerial error is significant by illustrating the effect of the error on the weighted-average dumping margin or countervailable subsidy rate. One commentator proposed that parties be allowed to submit factual information past the appropriate time limits if the information is needed to show or deny the existence of ministerial errors. The Department has not adopted this proposal. Based on the definition of ministerial error as set forth in paragraph (f), whether something qualifies as a ministerial error should be discernable from evidence already on the official record. Paragraph (d) also requires that replies to any comments be limited to issues raised in such comments.

Paragraph (e) deals with the analysis of any comments received and the announcement of the issuance of a correction notice (normally not later than 30 days after the date of public announcement of the Department's preliminary or final determination or final results of review). As discussed above, the 30-day framework is intended to avoid needless litigation by providing for resolution of ministerial error allegations before the litigation deadline expires.

Paragraph (f) defines *ministerial error* and is largely unchanged from existing §§ 353.28(d) and 355.28(d).

Paragraph (g) defines *significant ministerial error* and essentially is unchanged from proposed §§ 353.15(g)(4) and 355.15(h)(4). *See* Proposed Regulations at 1133–34. A number of commentators proposed setting a flat rate as a benchmark for ''significant.'' These proposed rates were lower than the standard for ''significant'' originally set out in the Proposed Regulations and incorporated herein. The Department believes that it would not be appropriate to lower the significant ministerial error standard. In establishing this standard, which, as a matter of administrative practice, the Department has applied successfully for several years, the Department had to balance the competing interests of accurate preliminary determinations and the need to complete the investigation in a timely manner. The Department has determined that the current standard allows it to correct the most serious errors promptly, while also permitting it to complete verification and issue a timely final determination. Moreover, the Department encourages parties, in their case briefs, to comment on all ministerial errors, including those not meeting the ''significant'' standard; all such errors will be addressed in the final determination.

Section 351.225

Section 351.225 deals with scope rulings, including rulings involving circumvention. With a few exceptions, section 351.225 is substantively unchanged from existing §§ 353.29 and 355.29, but paragraphs (b) through (f) do

contain some clarifications regarding procedures. Among other things, these clarifications are intended to make clear that the Department may, if appropriate, make a scope ruling based solely upon the application and prior determinations. Only if the Department determines that further inquiry is warranted will it formally initiate a scope inquiry. One other change worth noting is that paragraph (f)(5) establishes a 300-day deadline for scope rulings to which the Department will adhere to the extent practicable.

Paragraphs (g) and (h) incorporate by reference sections 781(a) and (b) of the Act. Several commentators argued that the standard for determining whether the process of assembly or completion under these sections of the Act was minor or insignificant had not changed from prior law. However, as observed by other commentators, the Senate Report states that, ''section 230 [of the URAA] amends section 781(a) and (b) to shift the focus of the circumvention inquiry away from a test of the difference in value between the subject merchandise and the imported parts or components toward the nature of the process performed in the United States or third country.'' S. Rep. 103–412, 103d Cong, 2d Sess., at 81.

Paragraphs (g) and (h) require the Department, in determining the value of parts or components purchased from affiliated parties, to apply the major input rule of section 773(f)(3) of the Act. Several commentators argued that such a provision is necessary to avoid the use of distorted values between affiliated parties. The Department agrees that such a provision is consistent with the Department's policy of avoiding the use of distortive prices paid to affiliated parties in its calculations.

Several commentators also argued that the Department should establish numeric guidelines for determining whether the value of imported parts or components constitutes a ''significant portion of the total value of the merchandise'' within the meaning of sections 781(a)(1)(D) and (b)(1)(D) of the Act. We have not adopted this suggestion, because the SAA recognizes that no single standard would be appropriate for every product examined by the Department. The SAA, at 894, states, ''[t]hese provisions do not establish rigid numerical standards for determining the significance of the assembly (or completion) activities in the United States or for determining the significance of the value of the imported parts or components.''

One commentator argued that the term ''class or kind'' as used in section 781(a) and (b) of the Act should be construed to encompass more than merely the category of merchandise covered by an order. Specifically, this commentator argued that, for purposes of circumvention inquiries, the term ''class or kind'' should always include components or parts. The Department agrees with other commentators, however, who argued that the term ''class or kind'' in the circumvention context is not broader than the merchandise covered by an order for other purposes of the statute.

Paragraph (k) adds advertisement or display to the criteria that the Department uses to determine whether a product is within the scope of an antidumping duty or countervailing duty order. Although this criterion was not previously specified in the regulations, the courts have recognized that it is a factor that should be considered. See *Kyowa Gas Chem. Indus.* v. *United States,* 582 F. Supp. 887, 889 (CIT 1984). One commentator urged the Department to add ''substitutability'' to the criteria. However, the Department believes that such a criterion would add significant uncertainty to the Department's orders, because it implies that an order could be expanded to include many products not contemplated in the petition (for example ''substitutability'' could be cited to expand an order covering honey to include sugar, corn syrup and molasses).

Paragraph (l) sets forth the procedures for suspension of liquidation. One party argued that the Department should order the suspension of liquidation as soon as a circumvention inquiry is initiated and impose cash deposits retroactively if the final circumvention determination is affirmative. While the Department recognizes that parties may have a ''free ride'' by circumventing until caught, the proposal would punish unfairly parties who unknowingly circumvent an order. The statute does not require a finding of intent in order to make an affirmative circumvention determination. Moreover, the Department agrees with commentators who argued that this proposal would create tremendous business uncertainty and impose a heavy burden on the Department and on Customs.

Paragraph (l)(4) provides that, when a final scope ruling is made within 90 days of the initiation of a review, products covered by that decision will be included in the calculation of any dumping margin or countervailing duty rate in that review, where practicable. If the ruling is made after that date, entries of the product will be subject to the final results of review, but, because collection of information is not practicable after this date, the Department will rely on non-adverse facts available.

New paragraph (m) provides that if different orders relate to the same product, the Department may, under appropriate circumstances, conduct a single scope inquiry covering all such orders. Thus, for example, if there is an antidumping duty order on widgets from Germany, and a countervailing duty order on widgets from France, the Department may conduct a single inquiry under paragraph (i) (minor alterations), (l) (later developed products) or (k) (other scope determinations). Any final ruling resulting from the inquiry would apply to both orders. In this way the Department will avoid both the burden of redundant inquiries and the danger of inconsistent determinations.

Finally, paragraph (n) deals with the service requirements for scope inquiries. Paragraph (n) defines the term ''scope service list'' as used throughout section 351.225 to include all parties who have participated in any segment of the proceeding. This broad service list is necessary because scope rulings are not often limited to the specific parties raising the issue, but rather affect all domestic and respondent interested parties.

Two commentators argued that the Department should look to Customs rulings in determining the country of origin of merchandise. The Department agrees that a Customs ruling may provide useful guidance; however, as recognized by the CIT, the Department is not required to follow Customs rulings in making its own scope rulings. *Diversified Products* v. *United States,* 572 F. Supp. 883, 887–88 (1983).

Other Issues

One commentator suggested that the Department publish in the Federal Register its ''remand determinations''; *i.e.,* the determinations the Department makes in response to a remand order from a court or a NAFTA binational panel. We have not adopted this suggestion at this time, because it is expensive to publish documents in the Federal Register and because the Department's current practice is to make remand determinations available to the public on request (with business proprietary information deleted, of course). However, to the extent that parties experience difficulties in obtaining copies of remand determinations, the Department will consider this suggestion as well as other alternatives, such as making these and other documents available on the Internet.

Some commentators have expressed the view that industrial users of products under antidumping or countervailing duty orders should have an opportunity to demonstrate that certain products are not available domestically, that continued inclusion of such products within an order does not serve the purpose of the law, and that, if the petitioners fail to show that the material is available domestically, the order should be revoked or narrowed with respect to those certain products. We are not proposing changes to the rules in this area because the existing practices have been adequate to address valid concerns. The clarification of investigations in their early stages to avoid later supply problems, and the narrowing of existing orders through changed circumstances proceedings has resulted in exclusion of a number of products not made in the United States, in direct response to supply concerns expressed by industrial users. Suggestions as to the use of existing authority for this purpose would be appropriate.

Subpart C—Information and Argument

Subpart C deals with collection of information and presentation of arguments to the Department, and is based on subpart C of Parts 353 and 355 of the Department's existing regulations. In addition to the regulatory changes noted in this section, the Department is also in the process of introducing other procedural reforms to streamline and simplify antidumping and countervailing duty proceedings. Where these reforms require regulatory change or are appropriately contained in regulations, they are included here. Other non-regulatory simplification measures will be introduced in Policy Bulletins and through Department procedures. Non-regulatory changes include (1) providing greater consistency in the handling of draft and newly-filed petitions by having, to the extent practicable, the same Department personnel initiate and conduct the investigation that reviewed the original petition; and (2) making available on the Internet all Department determinations under the URAA, as well as the URAA itself, the Statement of Administrative Action, and these regulations. The process of simplification is ongoing and one in which the Department continues to invite suggestions.

Section 351.301

Section 351.301 sets forth the time limits for submission of factual information in investigations and reviews.

Paragraph (b) is based on existing §§ 353.31(a)(1) and 355.31(a)(1), and sets forth the time limits in general for submission of factual information. Several commentators suggested that the Department adopt regulations establishing a final deadline of seven days prior to verification for the submission of information, whether solicited or unsolicited. Another commentator suggested a deadline of 14 days prior to verification. The Department believes that the seven-day deadline appropriately balances the needs of the Department to prepare for verification with the goal of easing the burdens on parties appearing before the Department. Therefore, paragraph (b)(1) provides that, with respect to investigations, submission of factual information is due no later than seven days before the date on which verification of any person is scheduled to commence. The timing of submission of factual information under existing §§ 353.31(a)(1)(i) and 355.31(a)(1)(i) also is tied to verification. However, there has been some confusion over the deadline as parties variously interpreted ''verification'' to mean a company-specific verification or verification for any company (or, in a CVD proceeding, verification of the government). In furtherance of the goal of simplifying the Department's procedures, these regulations clarify that the deadline for submission of factual information is identical for all parties, *i.e.*, seven days before the date on which verification of any person is scheduled to commence. (In contrast, the deadline for submission of factual information after verification, for reasons discussed below, is company- or government-specific.)

With respect to administrative reviews, paragraph (b)(2) provides that submission of factual information is due no later than 140 days after the last day of the anniversary month. With respect to changed circumstances, sunset, and section 762 (quantitative restriction agreements) reviews, paragraph (b)(3) provides that submission of factual information is due no later than 140 days after the publication of notice of initiation of the review. With respect to new shipper reviews, new paragraph (b)(4) provides that submission of factual information is due no later than 100 days after the publication of notice of initiation of the review. With respect to the remaining types of reviews, paragraph (b)(5) provides for submission of factual information by a date specified by the Department.

One commentator proposed that, once the deadline for submissions prior to verification has passed, the Department should not allow for submission of any corrections at verification. The Department has not adopted this proposal. The Department's current practice allows respondents to submit information at the beginning of verification to correct errors found during the course of preparing for verification. This policy balances the requirement that respondents present accurate and timely responses, with the goal of accurate determinations. Cf. *Murata Mfg. Co.* v. *United States*, 820 F. Supp. 603, 607 (CIT 1993) with *NSK Ltd.* v. *United States*, 798 F. Supp. 721 (CIT 1992), *aff'd*, 996 F.2d 1236 (Fed. Cir. 1993). The regulations make clear that the Department will continue this practice, as well as the practice of allowing respondents to submit information after verification where the Department has requested such information. Specifically, paragraphs (b)(1)–(4) provide that where verification is scheduled for a person, factual information requested by verifying officials will be due no later than seven days after the date on which the verification of that person is completed. This practice promotes accuracy and completeness in the calculation of margins (rates), both of which are underlying objectives of the new facts available methodology. Furthermore, the SAA, at 868, notes that the Department is not precluded from requesting information, in addition to that set forth in the verification outline, during a verification.

New paragraph (c) sets for the time limits for certain submissions, including information to rebut, clarify, or correct factual information submitted by another party, information in questionnaire responses, and publicly available information to obtain values for factors in nonmarket economy cases.

Paragraph (c)(1) is based on existing §§ 353.31(a)(2) and 355.31(a)(2), and provides the time limits for when an interested party may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party. The existing regulations allow only domestic interested parties to rebut, clarify, or correct factual information submitted by respondent interested parties. The regulation was drafted this way to allow domestic interested parties time to comment on respondents' information, particularly where such information may have been submitted on or after the applicable deadline. Upon further consideration, the Department has determined that the goal of accurate determinations is enhanced by allowing any interested party time to comment on submissions of factual information. As a result, paragraph (c)(1) provides that

any interested party may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party at any time prior to the applicable deadline for submission of factual information. If factual information is submitted (with the Department's permission) after the applicable deadline, interested parties have 10 days to comment on such information. This 10-day period, however, does not allow interested parties to continue to comment indefinitely on an alternating 10-day cycle. Rather, if the applicable deadline for submission of factual information has passed, interested parties would have one opportunity to comment on each such submission.

Paragraph (c)(2) deals with questionnaire responses and other submissions on request, and is based on existing §§ 353.31(b) and 355.31(b). Paragraph (c)(2)(i) provides that the Department may request any person to submit factual information at any time during a proceeding. Paragraph (c)(2)(ii) is new, and incorporates the requirements of the SAA, at 869, that the Department give notice of certain requirements to each interested party from whom the Department requests information.

Paragraph (c)(2)(iii) is new, and incorporates the requirements of the SAA, at 866, that interested parties shall have at least 30 days from the date of receipt to respond to the full initial questionnaire. The time limit for response to individual sections of the questionnaire, if the Secretary requests a separate response to such sections, may be less than the 30 days allotted for response to the full questionnaire. In particular, the Department anticipates that the response to Section A of a questionnaire, which seeks general information about a company, will be due before the expiration of the 30-day period. The Department's ability to timely identify appropriate respondents, in particular, would be hampered were the Department to delay the deadline for submission of this information. Consistent with the SAA, at 866, paragraph (c)(2)(iii) also provides that the ''date of receipt'' will be seven days from the date on which the initial questionnaire was transmitted.

Paragraph (c)(2)(iv) is new, and provides a 14-day deadline for notification by an interested party, under section 782(c)(1) of the Act, of difficulties in submitting a questionnaire response. Section 782(c)(1) of the Act provides that, if promptly asked to do so by an interested party, the Department may modify its requests for information to avoid imposing an unreasonable burden on that party. The statute also provides that the Department will take into account difficulties experienced by interested parties, particularly small companies, in supplying information, and will provide any assistance that is practicable. One commentator suggested that petitioners be allowed to comment formally on requests by respondents that the Department modify information requests. Parties do have the right generally to submit comments on any relevant issue, and, as such, the Department does not believe that a special regulation addressing this issue is necessary. Another commentator proposed defining ''small companies'' to whom the Department would provide assistance using an objective criterion, such as a company's annual sales volume (*e.g.*, small companies are those that earn less than $1 million in annual gross revenue). The Department does not believe that it is in a position to define ''small companies'' at this juncture. The Department will make a determination of what is a small company on a case-by-case basis.

Paragraph (c)(2)(v) is new, and, consistent with the SAA, at 866, indicates that a respondent interested party may request that the Department conduct a questionnaire presentation, during which Department officials will explain the requirements of the questionnaire.

Paragraph (c)(3) is new and extends the time limits for submission of publicly available information to obtain values for factors in nonmarket economy cases. Because publicly available valuation data is not verified, the Department is able to accept such data after verification. The extended time limits, therefore, permit parties to submit publicly available information even after a preliminary determination or a preliminary results of review, but still allow parties ample opportunity to comment on such information in their case briefs.

Paragraph (d) sets the time limits for certain allegations, including allegations concerning market viability, allegations of sales at prices below the cost of production, countervailable subsidy allegations, and upstream subsidy allegations.

Paragraph (d)(2) is new, and sets the time limits in investigations and reviews for allegations of sales at prices below the cost of production (COP) under section 773(b) of the Act.

The Department received a number of comments regarding the ''reasonable grounds'' threshold for initiation of COP investigations. Some commentators argued for consideration of sales below cost allegations on a country-wide basis. Other commentators suggested that the Department's regulations provide that where sales below cost allegations are not submitted until after respondents have provided questionnaire data, the allegations must be based on information specific to the exporter or producer.

The Department agrees with the latter commentators that where company-specific information has been placed on the record, any subsequent sales below cost allegation must take into consideration such information. The SAA, at 833, states that the standard for initiation of a sales below cost investigation is the same as the standard for initiating an antidumping investigation. The Department interprets this to mean that a sales below cost allegation, like an allegation of dumping, must be supported by information reasonably available to petitioner, including information already on the record.

The Department also, however, agrees with the former commentators that the SAA does provide for consideration of a sales below cost allegation on a country-wide basis. The Department's practice under the existing regulations only allows for company-specific allegations based on company-specific data. (In some instances, petitioners have used their own data where certain company-specific information was unavailable.) In practice, this meant that petitioners did not file sales below costs allegations until after companies filed their Section B responses covering home market sales data. As a result, in many instances the Department was unable to request and receive companies' cost data in time to analyze it before the preliminary determination. Pursuant to the SAA, at 833–34, however, the Department now has the authority to consider sales below cost allegations on a country-wide basis. In most instances, considering a country-wide allegation at the outset of an investigation will allow the Department to include its below-cost analysis in the preliminary determination, and, hence, consistent with the SAA, at 833–34, will provide parties with a greater opportunity to comment on the Department's analysis.

Therefore, with respect to country-wide allegations, paragraph (d)(2)(i)(A) allows the petitioner to file such an allegation in an investigation up until 20 days after the date on which the initial questionnaire was transmitted. Consistent with the SAA, at 833, this time frame will permit the Department to initiate below cost inquiries, where appropriate, at the outset of the case. In addition, the 20-day deadline—one day

before Section A responses normally are due—provides petitioners with the maximum time available to make a country-wide allegation before company-specific data is filed by respondent interested parties.

With respect to company-specific allegations, paragraph (d)(2)(i)(B) provides for filing such allegations in an investigation up to 20 days after a respondent interested party files a response to the relevant section of the questionnaire; *i.e.*, the Section B response containing home market sales data. The time limit, under paragraph (d)(2)(ii), for filing company-specific sales below cost allegations in administrative reviews, new shipper reviews, and changed circumstances reviews is identical. Paragraph (d)(2)(iii) provides the time limit for filing company-specific sales below cost allegations in expedited antidumping reviews.

A number of commentators also argued that the changes under section 773(b) of the Act in no way relaxed the ''reasonable grounds'' initiation standard for COP investigations, but, instead, were intended simply to permit the Department to initiate such investigations at the outset of a case. One commentator maintained that standards for below-cost investigations continue to be more stringent than those of an antidumping investigation. The Department believes that the statutory changes do not change the ''reasonable grounds'' requirement for initiation of a COP investigation. The Department will continue its practice of assessing the sufficiency of a petitioner's below-cost allegations on a case-by-case basis, and it will reject those allegations that are clearly frivolous or that are otherwise not supported by information reasonably available to petitioners.

The Department received one other comment of note concerning its initiation standard for COP investigations. The commentator suggested that as part of its initiation threshold, the Department take into account ''aberrational sales'' by accepting only those below-cost allegations that provide a ''reasonable ground'' for the existence of more than 20 percent below cost sales (*i.e.*, the substantial quantities threshold under section 773(b)(2)(C)(i) of the Act). Several other commentators urged the Department to reject this suggestion, stating that there was no statutory basis for such a practice. The proposal for a substantial quantities initiation threshold could apply only in those instances where respondents already have submitted questionnaire data. Therefore, the proposal undoubtedly conflicts with the Department's authority to consider country-wide cost allegations at the outset of an investigation. Moreover, even in the case of company-specific allegations filed subsequent to respondents' submission of questionnaire data, the proposal lacks merit, because the substantial quantities threshold under section 773(b)(2)(C)(i) of the Act does not relate to the existence of ''reasonable grounds'' to initiate a COP investigation.

Paragraph (d)(3)(i) is based on existing section 355.31(c), and sets forth the time limits for a countervailable subsidy allegation in investigations and reviews. These time limits are unchanged from the existing regulations. Paragraph (d)(3)(ii) is based on existing § 355.20(b), and sets forth the time limits for an upstream subsidy allegation in an investigation. The 10-day time limit for an allegation made prior to a preliminary determination is new. The 15-day time limit for an allegation before a final determination is consistent with existing regulations.

One commentator suggested that the Department's regulations clarify that the determination of whether ''new'' evidence has been submitted by the petitioner regarding a subsidy will be based on a consideration of the public evidence already included in the record of the proceeding. The public record would automatically include all public verification reports from prior segments of the proceeding. Furthermore, the commentator argued that upon receipt of new evidence of a subsidy, the burden of proof should shift to the foreign government, because it is in possession of the information necessary to establish that the program is not countervailable. Finally, the commentator suggested that the Department change its deadline for receiving new subsidy allegations from 120 days after publication of the notice of initiation of an administrative review to three weeks before verification.

While the Department may place public reports from prior segments of the proceeding on the record in an ongoing proceeding, it is not be required to do so. Parties are free to do so themselves as long as the information is submitted in a timely fashion. As for shifting the burden of proof, the Department's practice currently is to reinvestigate subsidy programs previously determined to be noncountervailable only where new information or evidence of changed circumstances is present. Similarly, the Department will not reexamine the countervailability of a program previously determined to be countervailable absent new information or evidence of changed circumstances. In both of these instances, the burden is on the domestic or respondent interested parties to provide new information or evidence of changed circumstances that would warrant a reconsideration of the subsidy program in question. With respect to extending the time for filing new subsidy allegations, the Department believes that a deadline of three weeks before verification does not provide sufficient time for the Department to send out and receive a response to a questionnaire concerning the alleged subsidy.

Paragraph (d)(4) is new, and sets forth the time limit for a targeted dumping allegation in an antidumping investigation. One commentator suggested that petitioners be given at least 90 days from the date of receipt of a respondent's sales listings in which to comment on possible targeted dumping. The Department appreciates the fact that at the outset of an antidumping investigation, petitioners normally will not have access to the type of data that goes into a targeted dumping analysis, and that they will need time in which to analyze questionnaire responses once they are received. However, the Department believes that in most instances, a deadline of 30 days before the scheduled date of the preliminary determination will provide petitioners with sufficient time to analyze the applicable data and submit an allegation, if appropriate. If the timing of responses does not permit adequate time for analysis, the Department may extend the time as appropriate.

Section 351.302

Section 351.302 is new, and clarifies the Department's authority to grant extensions of time limits and to reject untimely or unsolicited submissions. Although portions of § 351.302 are based on provisions of the Department's current regulations, other portions are entirely new.

Paragraph (b) provides that the Department may extend a regulatory deadline based upon its own determination that there is good cause to do so or where an interested party shows good cause for such an extension. Parties should not draw the inference that simply because a particular deadline does not explicitly address the Department's authority to extend such deadline that the Department may not do so. Unless expressly precluded by statute, the Secretary may extend any deadline for good cause. The deadlines that include the phrase ''unless the Secretary alters this time limit'' generally are tied to transmittal of, or response to, the initial questionnaire,

and, as such, are more likely to be extended than other deadlines tied to, for example, the date of publication of the preliminary determination (see, *e.g.*, § 351.301(d)(1) versus § 351.301(c)(3)).

Paragraph (c) sets forth the procedures for requesting an extension of a time limit, and is based on existing §§ 353.31(b)(3), 355.31(b)(3), 353.31(c)(3), and 355.31(c)(3). One commentator suggested that extensions for submission of questionnaire responses should be granted only in ''extraordinary circumstances,'' and that extensions should be limited to a period of 10 days. The Department agrees that it is important to collect information as early as possible in an investigation or review to provide parties an adequate opportunity to comment on the data and to provide the Department with adequate time to conduct its analysis. However, decisions regarding the possibility of extensions will be based on the ability of the party to respond within the original deadline and the parties' and the Department's ability to accommodate the requested extension. Thus, the Department believes that it is appropriate to determine whether to grant an extension, and for how long, based upon the facts in the particular proceeding. Another commentator suggested that the regulations provide for issuance of only one supplemental questionnaire. The Department has no intention of requesting the same information time after time. However, a limitation on the number of supplementals could interfere with the Department's ability to obtain clarifications or further information necessary to reach an informed decision.

Paragraph (d) provides that the Department will not consider untimely submissions for which it has not granted an extension under paragraph (b), and that it will return such materials to the submitter. In addition, consistent with section 782(c) of the Act, to the extent practicable rejected submissions will be accompanied by a written explanation of the reasons for not accepting the material.

One commentator proposed that parties be allowed to file objections to the Department's rejection of information, and that these objections be included in the record for judicial review. As long as a party's objection itself does not include a restatement of the rejected information, parties are permitted under the regulations to file timely comments on the Department's decision to reject information; *e.g.*, as part of its case brief. Therefore, no specific provision is necessary to meet the commentator's objective.

Section 351.303

Section 351.303 is new, and contains the procedural rules regarding filing, format, service, translation, and certification of documents. The Department has attempted to simplify these requirements, and, in all instances, has reduced the number of copies required for filing. Section 351.303 applies to all persons submitting documents to the Department. Although portions of § 351.303 are based on existing §§ 353.31, 355.31, 353.38(e), and 355.38(e), other portions are entirely new.

Paragraph (c) is new, and indicates the number of copies required for filing documents with the Department. Paragraph (c)(1) provides that, in general, six copies of any submission must be filed with the Department. Paragraph (c)(2) describes the application of the one-day lag rule under which filing requirements are altered slightly to allow for corrections in the bracketing of business proprietary information. The existing one-day lag rule filing requirements have been modified to simplify and streamline the filing process. Specifically, paragraph (c)(2)(i) indicates that only one copy of the business proprietary version of a document must be filed with the Department within the applicable time limit. (The service requirements of paragraph (f) also apply.) Paragraph (c)(2)(ii) provides that on the next business day, six copies of the complete, final business proprietary version (*not* just the corrected pages) must be filed with the Department. With respect to the final business proprietary version, the service requirements of paragraph (f) may be satisfied by serving other persons with just the corrected pages. The final business proprietary version must be identical to the business proprietary version filed on the previous business day, except for any bracketing corrections. Paragraph (c)(2)(iii) provides for the filing of three copies of the public version simultaneously with the filing of the final business proprietary version. Paragraph (c)(2)(iv) describes the filing requirements for information in double brackets (information which the submitter does not agree to have disclosed under APO). Finally, paragraph (c)(3) clarifies that all information on computer media must be releasable under APO.

Paragraph (d) contains the formatting requirements for documents filed with the Department. Paragraph (d)(2)(iv) is new, and requires that documents indicate the Department office conducting the proceeding.

Paragraph (e) requires that documents submitted in a foreign language be accompanied by an English translation. This requires that all non-English language documents be accompanied by an English translation of pertinent portions. When parties are unable to comply with this requirement, the Department will work with them on an acceptable alternative.

Paragraph (f)(1) provides for service of copies on other persons. Paragraph (f)(2) provides that each document filed with the Department must be accompanied by a certificate of service. Paragraph (f)(3)(i) provides for service of briefs. Paragraph (f)(3)(ii) is new, and clarifies the requirements for service of requests for review.

Paragraph (g) clarifies that each submission containing factual information must be accompanied by the appropriate certification regarding the accuracy of the information.

Section 351.304 [Reserved—APO]

Section 351.305 [Reserved—APO]

Section 351.306 [Reserved—APO]

Section 351.307

Section 351.307 deals with verification of information, and is based on existing §§ 353.36 and 355.36.

Paragraph (b)(1) is based on existing §§ 353.36(a)(1) and 355.36(a)(1), and indicates when the Department will verify factual information. One commentator suggested defining ''good cause for verification,'' the standard applicable in determining whether to verify in an administrative, new shipper, or changed circumstances review, by including in the regulations a non-exhaustive list of particular circumstances under which the Department normally would find that good cause for verification exists; *e.g.*, changes in a respondent's accounting methodology, organization structure, or ownership, or significant changes in the product-mix offered. While, the Department agrees that these circumstances may, in some cases, provide good cause for verification, it is more appropriate to determine good cause on a case-by-case basis, weighing the specific facts before the Department in any given review.

Paragraph (b)(1)(v) deals with requests for verification in an administrative review, and is based on existing §§ 353.36(a)(1)(v)(A) and 355.36(a)(1)(iv)(A). The deadline for domestic interested parties to request verification has been shortened from 120 days to 100 days after publication of the notice of initiation of review. This change is intended to give the Department a longer time to prepare for

verification, thereby resulting in more efficient verifications.

Paragraph (b)(2) is new, and provides that the Department may verify in any other segment of the proceeding not provided for in paragraph (b)(1), if the Department determines that it is appropriate to do so.

Paragraph (b)(3) is based on existing §§ 353.36(a)(2) and 355.36(a)(2), and provides that the Department may select and verify a sample of exporters or producers where it is impractical to verify relevant factual information for each person due to the large number of exporters or producers included in an investigation or administrative review.

Paragraph (b)(4) is new, and, consistent with the SAA, at 868, describes when the Department may conduct verification.

Paragraph (c) is based on existing §§ 353.36(b) and 355.36(b), and, consistent with the SAA, at 868, indicates that the Department will issue a verification report.

Paragraph (d) is based on existing §§ 353.36(c) and 355.36(c), and, consistent with the SAA, at 868, describes certain procedures for verification. Paragraph (d) (2), carried over from existing § 353.36 (c), provides that the Department may request access to the records of persons not affiliated with respondent exporters, producers, or importers. This provision clarifies that the Department may use the records of the unaffiliated party if needed to establish the accuracy of data provided by the respondent. The last sentence of paragraph (d) also is new, and, consistent with current practice, clarifies that as part of verification in a countervailing duty proceeding, the Department may request access to records of the government of the affected country.

One commentator proposed that to ensure that parties have an adequate opportunity to prepare for verification, the regulations should include provisions requiring that the Department provide by a particular date notice of its intent to verify, as well as detailed information regarding the location of the verification and the exhibits the Department will require. These proposals are consistent with paragraph (d), and, to the extent practicable, the Department intends to implement them in practice.

Another commentator suggested a number of ''improvements'' to the verification process. These included allowing the presence of a neutral third party at verification, copying all documentation relied upon in verification, allowing all parties (not just respondents) to review draft verification reports, including in the record both the draft verification report and the final report, conducting verification in Washington with books and records forwarded by courier or electronically, and permitting domestic counsel and consultants to participate at verifications. We agree with the commentator that there are a number of ways to improve the verification process. For example, we are modifying our questionnaire in order to collect documentation that would link the reported sales information to the respondent's general ledger. We also intend to require that, prior to verification, respondents submit any computer programs used to identify the sales subject to investigation or review. By collecting this information prior to the commencement of verification, the Department will be able to use the time available at the verification site more efficiently. While we disagree with the suggestion that a neutral third party or domestic counsel participate at verification, we invite other suggestions on how to improve the verification process.

Finally, another commentator proposed that petitioners be given a formal opportunity to comment on verification outlines. We agree that petitioners should be given opportunity to comment. Because this is part of the Department's standard practice, the Department believes that it is not necessary to include a provision in the regulations.

Section 351.308

Section 351.308 is new, and deals with determinations on the basis of the facts available.

Paragraph (b) provides that the Department will make determinations on the basis of the facts available in accordance with section 776(a) of the Act. Under the statute, the Department will use the facts otherwise available if necessary information is not available on the record, or if an interested party or any other person withholds requested information, fails to provide such information by the deadlines for submission of the information or in the form and manner requested, significantly impedes a proceeding, or provides such information but the information cannot be verified.

Evident from a comparison between the pre-URAA statute and the new statute is the fact that the circumstances triggering use of facts available are virtually identical to those triggering use of best information available (''BIA''). Significantly, however, although the circumstances giving rise to use of BIA and facts available are basically indistinguishable, the presumptive adverse inference associated with use of BIA is not automatically associated with use of facts available. Specifically, section 776(b) of the Act provides that only if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information'' may the Department use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Therefore, the determination of what to use as facts available will be affected by whether or not the Department may make an adverse inference under the statute.

A number of commentators proposed that the regulations set forth the Department's current two-tiered methodology for selecting BIA. However, given the differences between the Department's past practice regarding BIA and the new statutory provisions on facts available, the Department does not believe this proposal would be appropriate.

In cases where the Department determines that an interested party has not failed to cooperate, the Department will apply simply the ''facts available''; *i.e.*, the Department will make its determination ''based on all evidence of record.'' SAA at 869. However, as paragraph (e) provides (by cross-reference to section 782(e) of the Act), the Department will consider information that is submitted by an interested party and is necessary to the determination, but that does not meet all the applicable requirements established by the Department, only if: (1) The information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties.

One commentator suggested that information contained in the petition should not be used as facts available. The statute, however, does not limit the specific sources from which the Department can obtain facts available.

In cases where the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act provides that the Department may make an adverse inference about the missing

information, and, hence, apply ''adverse facts available.'' A number of commentators proposed that ''a good faith effort'' to provide information responsive to the Department's request for information be sufficient to meet the requirement of ''acting to the best of [a company's] ability.'' The determination of whether a company has acted to the best of its ability will be decided on a fact- and case-specific basis, and the Department will consider whether a failure to respond was deliberate or simply due to practical difficulties that made the company unable to respond within the specified deadline. However, it is clear that affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.

Several commentators additionally suggested that where information is not maintained by the respondent in the ordinary course of trade, failure to produce such information should not presumptively be a violation of the ''best of its ability'' standard. However, not all information that needs to be produced during the course of a proceeding is kept in the ordinary course of business (*e.g.*, worksheets), and failure to provide such information may be deemed to violate the ''best of ability'' standard. The determination as to whether a company has acted to the best of its ability to comply with an information request can only be made based on the record evidence in a particular proceeding.

Consistent with section 776(b) of the Act and the SAA, at 870, paragraph (c) provides that an adverse inference may include reliance on secondary information or any other information placed on the record. Paragraph (c)(1) indicates that secondary information includes information derived from the petition, a final determination in an antidumping or countervailing duty investigation, or any previous review.

Paragraph (d) explains that where the Department relies on secondary information, to the extent practicable the Department will corroborate that information from independent sources, such as published price lists, official import statistics and customs data, and information obtained from interested parties during the instant investigation or review. Consistent with the SAA, at 870, the third sentence of paragraph (d) indicates that ''corroborate'' in this context means that the Department will look to such sources reasonably at the Department's disposal to examine whether the secondary information has probative value. Paragraph (d) also indicates that in accordance with the SAA, at 870, where corroboration is not practicable, the Department still may apply an adverse inference.

One commentator argued that secondary information taken from a petition need not be corroborated, because the Department used this information as the basis for its initiation. Section 776(c) of the Act, however, specifically provides that, to the extent practicable, the Department will corroborate secondary information, which includes the petition, from independent sources that are reasonably at the disposal of the Department. As a result, the Department has not adopted this proposal.

Section 351.309

Section 351.309 deals with written argument, and is based on existing §§ 353.38 and 355.38.

Paragraph (b)(1) provides that the Department will consider in making its final determination or final results of review written arguments in case or rebuttal briefs filed within the applicable time limits.

Paragraph (b)(2) provides that the Department may request written argument on any issue from any person at any time during a proceeding. For example, the Department may choose to request post-hearing briefs on a particular topic.

Paragraph (c)(1) sets out the time limits for filing case briefs in investigations and reviews. Paragraph (c)(2) indicates that, as part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages.

Paragraph (d)(1) sets out the time limits for filing rebuttal briefs. The time limit for filing rebuttal briefs—within five days after the case briefs are filed—is now the same in both investigations and reviews. Paragraph (d)(2) indicates that, as part of the rebuttal brief, parties are encouraged to provide a summary of arguments not to exceed five pages.

Section 351.310

Section 351.310 is new, and deals with matters related to hearings. Although portions of section 351.310 are based on existing §§ 353.38(b), 355.38(b), 353.38(f) and 355.38(f), other portions are entirely new. These provisions have been modified from prior regulations with an eye to easing the burdens and costs imposed on parties appearing before the Department.

Paragraph (b) is new, and provides that the Department may conduct a pre-hearing conference to facilitate the conduct of the hearing. In most instances, the pre-hearing conference will be held by telephone. Examples of issues to be discussed include the necessity of conducting a hearing, time limits for direct and rebuttal presentations, identification of significant issues, and page limits for case and rebuttal briefs.

Paragraph (c) is based on existing §§ 353.38(b) and 355.338(b), and sets forth the time limit for requesting a hearing. The existing time limits for requesting a hearing in both investigations and reviews have been extended. The extended time limit—30 days after the date of publication of the preliminary determination or preliminary results of review—will allow parties more time to consider the necessity of requesting a hearing.

Paragraph (d) is based on existing §§ 353.38(f) and 355.38(f), and indicates that upon request, the Department will hold a public hearing normally two days after rebuttal briefs are filed. Under section 774(b) and section 751(e) of the Act, the Department is required to hold a hearing upon the request of an interested party in an investigation and in any review under section 751 of the Act. In other segments of a proceeding, such as scope inquiries, the decision to hold a hearing is discretionary. Consistent with section 774(b) of the Act and existing §§ 353.38(f)(3) and 355.38(f)(3), paragraph (d)(2) provides that such hearings are not subject to the Administrative Procedure Act.

Paragraph (e) is new, and provides that the Department may consolidate hearings in two or more cases. Cases where the Department is most likely to consolidate hearings are those where common issues exist concerning the same product from different countries or where common issues exist concerning different products from the same country.

Paragraph (f) is new, and indicates that the Department may conduct closed hearing sessions where parties wish to discuss business proprietary information. The Department's existing regulations do not expressly provide for representatives to discuss business proprietary information during administrative hearings, although, in limited instances, the Department has allowed discussion of business proprietary information during a hearing. One commentator suggested that the Department should consider procedures similar to those used by the ITC regarding *in camera* sessions for purposes of discussing business proprietary information that cannot be adequately summarized for discussion at a public hearing. The commentator argued that the inability to conduct a closed hearing may prejudice parties,

who may not be able to give a full presentation of their arguments.

We agree that the Department should be able to conduct closed hearing sessions where appropriate. Paragraph (f), therefore, allows an interested party to request a closed hearing session. However, the Department believes that in the interest of transparency, closed hearing sessions should not consume the entirety of a hearing. Therefore, the Department intends to limit the duration of such sessions, and to limit them to the discrete issues identified by the requesting party. Before a closed hearing session begins, the hearing room will be cleared of all persons not subject to APO. Consistent with paragraph (g), the section of the transcript from a closed hearing session will be treated like other documents containing business proprietary information.

Section 351.311

Section 351.311 deals with countervailable subsidy practices discovered during an investigation or review, and is based on existing § 355.39. Apart from minor clarifications, the only change is the addition of subsidy programs in violation of Article 8 of the SCM Agreement, which the Department is notified of by the United States Trade Representative.

Section 351.312

Section 351.312 is new, and, consistent with section 777(h) of the Act, provides consumer organizations and industrial users the opportunity to submit information and argument on matters relevant to a particular determination of dumping, subsidization, or injury. Although such parties are not ''parties to the proceeding'' as defined in the statute, the Department recognizes, as pointed out by one commentator, ''that industrial users' comments are a potential authoritative source for available factual information supporting Department determinations.'' The importance of input from industrial users and consumer organizations is recognized in both the AD Agreement, at Article 6.12, and the SCM Agreement, at Article 12.10. The SAA, at 871, while emphasizing that section 777(h) of the Act does not confer ''interested party'' status on such users and organizations, explains that this provision explicitly requires the Department to furnish such users and organizations with an opportunity to provide relevant information.

Paragraph (b) indicates that industrial users and representative consumer organizations may submit to the Department relevant factual information and relevant written argument in the form of case and rebuttal briefs. Paragraph (b) also makes clear that all such submissions must be filed in accordance with the procedural rules in § 351.303.

One commentator noted that the opportunity under the Act for such users and organizations to submit relevant information would not be meaningful if the Department did not respond to such information. With respect to this comment, the Department will include in the record of a proceeding Information submitted by industrial users and consumer organizations, and the Department may rely on such information as appropriate. Furthermore, the Department intends to address relevant comments made by industrial users and consumer organizations in making its determinations in the same manner that it considers and responds to ''interested party'' comments.

Paragraph (c) clarifies that industrial users and consumer organizations may submit business proprietary information, but neither they nor their representatives will be granted access under APO to business proprietary information submitted by other persons.

Part 351, Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value and Normal Value

Subpart D deals with the calculation of export price, constructed export price (''CEP''), fair value and normal value, and corresponds to subpart D of Part 353 of the Department's existing regulations.

Section 351.401

Section 351.401 deals with general principles common to the identification and calculation of export price, constructed export price and normal value. In this regard, although the URAA changed the names of purchase price and exporter's sales price to export price and constructed export price, respectively, to conform to the terminology of the AD Agreement, the SAA is clear that ''no change is intended in the circumstances under which export price (formerly ''purchase price'') versus constructed export price (formerly ''exporter's sales price'') are used.'' SAA at 822–23. Several commentators have argued that the Department should abandon its prior practice (often called ''indirect purchase price'') under which the Department considered certain sales to be ''purchase price'' sales, even though there was some involvement by a U.S. affiliate. Other commentators have pointed to the language of the SAA as support for their conclusion that this aspect of the distinction between export price and constructed export price remains under the URAA.

The Department agrees with these latter commentators that Congress and the Administration did not intend a change to the circumstances under which the Department would use export price or constructed export price, including the ''indirect purchase price'' situations. It has been the Department's longstanding and well-recognized practice that a transaction will be considered an export price sale, despite the involvement of an affiliate in the United States where: (1) The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the physical inventory of the related selling agent; (2) this was the customary commercial channel for sales of this merchandise between the parties involved; and (3) the related selling agent in the United States acted only as a processor of documentation and a communication link with the unrelated buyer. Because no change from current practice is required, the regulations do not address this issue.

Paragraph (b) codifies the Department's longstanding practice of requiring parties claiming an adjustment to provide sufficient support for that claim. This regulation is not intended to change the Department's practice as recognized by the courts. *See e.g., Timken* v. *United States,* 673 F. Supp. 495, 513 (CIT 1987). Because the relevant information is normally under the sole control of the respondent interested party, this practice is usually applied to adjustments that would benefit such a party. This regulation is not intended to impose any additional burden on domestic interested parties that do not have access to the relevant information. Paragraph (b) also codifies the Department's longstanding prohibition against double-counting adjustments.

Under paragraph (c), the Department will continue its practice of adjusting reported gross prices for discounts, rebates and certain post-sale adjustments to price that affect the net price. Where such discounts, rebates and price adjustments are granted on a transaction-specific basis, they should be reported on that basis. However, as with selling expenses, the Department will continue its current practice of allowing non-distortive allocations where transaction-specific reporting is not feasible. SAA at 823–24. Where verification is conducted, the Department will review the

respondent's records to ensure that discounts, rebates and post-sale price adjustments are reported on as specific a basis as those records permit.

Paragraph (d) provides that the Department will not adjust costs used as the basis for adjustments to factor in delayed or early payment of expenses. Certain parties have argued that, when a party incurs an expense but does not pay for it immediately, the Department should reduce the amount of the adjustment to account for the savings that accrue due to the delayed payment. However, the courts have upheld the Department's position that the statute does not require that level of precision in quantifying adjustments. *See, Federal Mogul* v. *United States*, 839 F. Supp. 881, 886 (CIT 1993).

Paragraph (e) deals with the adjustment for movement expenses described in section 772(c)(2)(A) of the Act for export price and constructed export price calculations, and section 773(a)(6)(B)(ii) of the Act for normal value calculations. Consistent with the SAA, at 823 and 827, paragraph (e) clarifies that the deduction for movement expenses includes a deduction for all warehousing expenses incurred after the merchandise leaves the producer's factory, or, in the case of a reseller, the point from which the reseller shipped the merchandise. This paragraph also clarifies that the phrase ''original place of shipment'' in the Act refers to the place of shipment from the party making the sale which is the subject of the Department's examination. This is intended to clarify that, where the sale to the United States which is being examined is made by a reseller, movement expenses from the producer to the reseller are not deducted. This is appropriate because such expenses are part of the seller's cost of acquisition.

Paragraph (f) describes the situations in which the Department will treat multiple affiliated producers as a single entity. Under prior practice, the Department, in certain situations, would treat related producers that were separate legal entities as a single entity; *i.e.*, the Department would ''collapse'' the producers into a single firm. Where firms were so collapsed, the Department would issue a single questionnaire to, and calculate a single weighted-average dumping margin for, the collapsed entity. Paragraph (f) codifies the Department's approach regarding such producers, based on the new statutory term ''affiliated persons.'' In order to be treated as a single entity, the producers must be affiliated and have production facilities that are sufficiently similar that shifting production would not require substantial retooling. Although such decisions are almost always made on the basis of the subject merchandise and foreign like product, or on a more narrow basis, in rare situations the Department may conclude that a product that is not subject merchandise or a foreign like product is sufficiently similar to subject merchandise that the producers of those products may be candidates for collapsing. This paragraph does not address the Department's ability to ''collapse'' resellers, without production facilities, and their affiliated producers, although the considerations identified in paragraphs (f) (1), (2) and (3) would be among those considered in reaching such a decision. Similarly, this paragraph does not address the issue of whether a producer or exporter in a nonmarket economy country is entitled to an individual antidumping rate. That determination is addressed by the definition of ''rates'' in section 351.102.

Section 351.401(g) provides that, in accordance with the Department's past practice, respondents may allocate expenses if transaction-specific reporting is not feasible. Where verification is conducted, the Department will verify that expenses are reported on as specific a basis as permitted by the company's records and that the allocation does not distort the comparison. This is in accordance with the SAA, at 828, which states that the Department may continue its practice of permitting allocations, ''provided that the allocation method does not cause inaccuracies or distortions.''

Some commentators argued for a regulation providing that certain direct selling expenses never could be reported on an allocated basis, but instead always must be reported on a transaction-specific basis. Other commentators argued for a regulation permitting the reporting of adjustments on an allocated or average basis. Yet another commentator argued for a regulation that would permit customer-specific allocations, even if based on in-scope and out-of-scope merchandise, if the Department determines that such an allocation is reasonable and has a minimal potential for creating a distorting effect.

Consistent with the SAA, at 823–824, paragraph (g) provides that, in order to qualify as a direct selling expense, an expense ''normally'' must be reported on a transaction-specific basis. However, as noted above, the Department may consider allocated expenses as direct selling expenses when transaction-specific reporting is not feasible. In determining what is feasible, the Secretary may balance the difficulties of reporting transaction-specific expenses against the potential inaccuracies of reporting allocated expenses.

New paragraph (h) deals with the Department's treatment of subprocessors or ''tollers.'' Several commentators expressed support for the Department's recent decision that tolling operations (*i.e.*, subcontractors) should not be treated as manufacturers or producers of the subject merchandise. The Department concurs with those commentators who urged that, because this policy has not been widely publicized, that it be enunciated in the regulations. Under paragraph (h), where a party owning the components of subject merchandise has a subcontractor manufacture or assemble that merchandise for a fee, the Department will consider the owner to be the manufacturer, because that party has ultimate control over how the merchandise is produced and the manner in which it is ultimately sold. The Department will not consider the subcontractor to be the manufacturer or producer, regardless of the proportion of production attributable to the subcontracted operation or the location of the subcontractor or owner of the goods. For example, where Firm A sends raw materials to a subcontractor for finishing before Firm A sells the finished goods to the United States, the Department will base export price or constructed export price on the price charged by Firm A (or its U.S. affiliate) for the finished goods. Similarly, the Department will base normal value on Firm A's sales of the finished goods in its home market (subject to the viability determination described in section 351.404).

Paragraph (i) establishes how the Department will identify the date of sale for sales of the subject merchandise and foreign like product. Under this provision, the Department will normally rely on the date of invoice. This is a change from prior practice under which the Department based the date of sale on the date on which the ''essential terms of sale'' (normally price and quantity) were established. *See*, Certain Forged Steel Crankshafts from the Federal Republic of Germany, 52 FR 28170, 28172 (1987). Several commentators argued that this methodology delayed proceedings, increased the cost to the respondents, complicated verification, and was unpredictable. In response to these concerns, paragraph (i) provides that the Department normally will use the date of invoice as the date of sale. However, the Department recognizes that this date may not be appropriate in some circumstances, such as those

involving certain long-term contracts or sales in which there is an exceptionally long time between the date of invoice and the date of shipment. Paragraph (i) provides the Department with sufficient flexibility to handle such situations.

Some commentators suggested that the Department use as the date of sale whatever date a respondent uses in its internal records. However, this approach would create a high degree of unpredictability and inconsistency among respondents, and it might be subject to manipulation. The date of invoice is easily verifiable, and, in the Department's experience, is clearly recorded in most respondents' records. With respect to the concerns of one commentator that use of a respondent's invoice date could make the date of sale subject to manipulation, the Department intends to verify that the records upon which the date of invoice are based were kept in the ordinary course of business. Additionally, particularly during administrative reviews, the Department will carefully scrutinize any change in record keeping that could change the date of invoice.

Section 351.402

Section 351.402 deals with certain adjustments that the Department will make in calculating export price and constructed export price under section 772 of the Act.

Paragraph (b) clarifies the expenses that the Department will deduct from the price to the unaffiliated purchaser (*i.e.*, the ''starting price'') in calculating constructed export price under section 772(d) of the Act. Consistent with the SAA at 823, the Department will make deductions under section 772(d) for those expenses enumerated in the Act which are due to economic activities in the United States. Thus, commissions, direct selling expenses, assumptions of expenses on behalf of the buyer, and indirect selling expenses attributable to the sale to the unaffiliated purchaser in the United States will be deducted in calculating the constructed export price. This deduction will be made irrespective of when the expenses are incurred, or where payment is made. The cost of advertising in the United States, for example, may be deducted under section 772(d) even if the advertising is paid for outside of the United States. However, the foreign seller's expenses associated with selling to the affiliated reseller in the United States would not be deducted under section 772(d), rather, they would be dealt with as circumstance of sale adjustments under section 773(a)(6)(C)(iii) of the Act.

The manner in which the Department intends to implement the special rule for merchandise with value added after importation contained in section 772(e) of the Act is explained in some detail in paragraph (c). Under that section, where a substantial amount of value is added by a process of further manufacture or assembly in the United States, the Department may use surrogates for the constructed export price, rather than perform the extensive calculation required to deduct the actual value added in the United States. Paragraph (c)(1) clarifies that deduction for value added in the United States and the special rule may apply where the actual importer or purchaser, for example a subcontractor, is not affiliated with the exporter, but is acting on behalf of the affiliated party in the United States.

Paragraph (c)(2) explains how the Department will make an estimation of whether the value added in the United States ''exceeds substantially'' the value of the subject merchandise. The SAA explains that, ''[w]hile Commerce is not required to calculate precisely the value added after importation into the United States, 'exceed substantially' means that the value added in the United States is estimated to be substantially more than half of the price of the merchandise as sold in the United States.'' SAA at 826. For purposes of this estimation, the Department will normally calculate the value added by subtracting the average net price at which subject merchandise is sold to affiliated importers who undertake further manufacturing, from the average net price at which the merchandise with value added is eventually sold to unaffiliated customers in the United States. Other than reduction for discounts, rebates and other post-sale price adjustments, no adjustments will be made to these prices. Where this average difference (*i.e.*, value added in the United States) is at least 60 percent of the average price to unaffiliated customers, the special rule normally will be applied to all merchandise with value added in the United States. Usually, the Department will calculate these averages across the subject merchandise sold with value added. However, where there are significant disparities in price between subject merchandise or the value added products, the Department retains the discretion to base the averages on smaller groupings of products.

Paragraph (c)(3) explains that, for merchandise to which the Department has determined the special rule applies, it will normally assign a margin equal to the weighted-average margin calculated based upon the prices of identical or other subject merchandise sold to unaffiliated parties. This is equivalent to using the price of sales to unaffiliated parties, along with all other terms and conditions of those sales, and calculating the margins based on those surrogate prices, terms and conditions. Because such margins will have been calculated for those sales to unaffiliated parties, the Department will not need to repeat the calculation for the sales to which the special rule applies. The Department believes this approach is appropriate, because a price cannot be dissociated from the terms and conditions that gave rise to that price. For example, a price for one product cannot simply be substituted as an appropriate price for a different product. If the Department were simply to adopt a price for a different product and then analyze the sale, there would be a question as to whether the price should be adjusted to account for the difference in merchandise to avoid distortion. Adjustments for other differences between the surrogate sales and the special rule sales also might be necessary. Making such adjustments would unduly complicate the analysis under this provision, which is intended to simplify the process.

Paragraph (d) elaborates on the procedure the Department will follow in deducting profit to arrive at a constructed export price under sections 772(d)(3) and 772(f). Various commentators have urged that the regulations provide further guidance regarding the profit deduction. Paragraph (d)(1) specifies, in accordance with section 772(f) of the Act, that both the expenses used to allocate the profit to the U.S. sales, and the profit to be allocated normally will be based upon all sales of the subject merchandise in the United States and the foreign like product in the foreign market. This clarifies explicitly, as suggested by some commentators, that losses in one market would offset profits in another. This is clearly contemplated by the term ''total actual profit'' in section 772(f) of the Act, and is reinforced by the reference in the SAA, at 825, to situations in which there is no profit. Some commentators suggested that the regulations clarify whether a profit ratio or per-unit profit will be used. This change to the rule is unnecessary, but in accordance with section 772(f)(2) of the statute, the Department will apply a profit ratio, *e.g.* profit divided by selling expenses.

In calculating profit, this paragraph specifies that the Department will not disregard home market sales below cost. Although some commentators suggested that below-cost sales should be disregarded when determining total

actual profit, there is no provision in the statute for disregarding sales below cost in this context, and doing so would conflict with the statutory requirement to use ''actual profit.''

Paragraph (d)(2) specifies that the Department will not be limited to audited financial statements, but may use any appropriate financial report, including internal reports, the accuracy of which can be verified, if verification is conducted. This provision reflects the suggestion of commentators that the Department make clear its discretion to use financial reports prepared in the normal course of business that are as specific as possible to the merchandise under investigation or review.

Finally, paragraph (d)(3) recognizes the obligations of the Department not to require the reporting of costs solely to make the profit deduction, and, where practicable, to use costs that are submitted voluntarily for purposes of calculating profit. However, to ensure that voluntary submissions of cost data can be used for this purpose, the Secretary will specify deadlines after which such voluntary submissions will no longer be accepted. The Department has not adopted a rule, proposed by one commentator, that the Department not be allowed to initiate an investigation of sales below cost based on an allegation derived from cost information submitted voluntarily for this purpose. If the information submitted voluntarily supports a sufficient allegation that home market sales have been made below cost, then the Department is required to initiate a cost investigation.

Various commentators suggested that the regulations specify the costs that will be subtracted from revenues to determine total actual profit. Although the Department has not elaborated on the guidance provided in section 773(b)(3) of the Act with respect to cost of production and section 773(e) of the Act with respect to constructed value, the Department will develop an appropriate treatment of particular expenses through practice, as it has done with cost of production and constructed value.

A number of commentators contended that the Department should cap the amount of profit deducted at the amount of profit actually earned on each U.S. sale. Other commentators argued for an adjustment to normal value to offset any distortion caused by the profit allocation method required by the statute. These commentators claimed that failure to make such an adjustment to normal value would lead to double-counting of profit.

Article 2.4 of the Agreement provides for the deduction of profit and selling expenses associated with economic activities in the export market in order to construct an export price. The statute implements the Agreement by requiring that the profit calculation for constructing an export price be computed based on the combined profits of the exporter on sales to both the U.S. and home markets. The SAA, at page 825, prohibits a cap based on the transfer price by stating that ''the transfer price between exporters or producers and the affiliated importer is irrelevant in determining the amount of profit to be deducted'' in constructing an export price. Further, the statute does not provide for an adjustment to normal value in the manner suggested.

Some commentators also suggested that the regulations state that profit will be deducted in calculating CEP only when the importer is affiliated with the exporter. They argue that this is necessary to ensure that the profit of an unaffiliated consignment importer will not be deducted twice. While the Department fully agrees with this comment, the regulations do not include such a provision, because the statute clearly limits the profit deduction to profits allocated to expenses incurred by the producer, exporter, or affiliated seller.

One commentator suggested that the regulations explain whether profits in the home market or a third country market will be used when there are few sales in the home market, *i.e.*, that market is not ''viable'' under section 351.404, discussed below. The statute does not clearly address this question, and as this is a new provision with which the Department has no experience, the Department will address this question after gaining experience in its administration.

Paragraph (e) explains how the Department will treat payments between affiliated parties for purposes of section 772(d) of the Act. This provision explains that the Department will normally base the deduction of expenses on the cost to the affiliate, rather than on any payment to the affiliate. However, where the Department is satisfied that the exporter does not have access to that information, the Department may use the payment to the affiliated party if that payment represents an arm's-length price for the service provided by the affiliated party. The Department will determine whether the price is arm's length by a comparison of the price at issue with prices for similar services paid to unaffiliated providers, or with prices charged by the affiliate to unaffiliated parties. Thus, under this provision, where an affiliated importer sells the subject merchandise on commission, the Department will normally use the selling expenses of the affiliated importer, but may use the amount of the commission, if the conditions identified above exist.

Paragraph (f) provides that the Department will deduct from the export price (or the constructed export price) any antidumping or countervailing duties paid on behalf of the importer, or reimbursed to the importer, by the producer or exporter and sets out an exception and the procedures to be applied in that situation. Other than the changes in language required by the URAA, the provision with respect to antidumping duties is unchanged from § 353.26 of the existing regulations. The requirement that such countervailing duties be deducted from the export price (or constructed export price) is new.

Under section 772(c)(1)(C) of the Act, the Department increases the price used to calculate export price (or constructed export price) by the amount of any countervailing duty imposed to offset an export subsidy. The countervailing duty paid by the importer has the effect of increasing the price to the importer by the amount of that duty. If the producer or exporter pays or reimburses the duty, the price has not been increased and a deduction in the amount of the duty paid or reimbursed by the producer or exporter, to offset the addition made under section 772(c)(1)(C), is appropriate to arrive at the correct export price (or constructed export price). As with antidumping duties, the statute authorizes no adjustment to export price (or constructed export price) for countervailing duties imposed to offset other types of subsidies. And just as with antidumping duties, payment of those countervailing duties by the exporter or producer on behalf of the importer represents an effective reduction in the price to the unaffiliated purchaser. Thus, in both instances it is appropriate to take the deduction described in paragraph (f).

Section 351.403

With respect to the calculation of normal value, § 351.403 sets forth, without substantive change, the regulations regarding sales and offers for sale and the regulations regarding use of sales to or through an affiliated party. However, as discussed above with respect to section 351.102, differences between the old term ''related party'' and the new term ''affiliated party'' may have an impact in this area. The provisions corresponding to § 351.403 are currently contained in §§ 353.43(a) and 353.45 of the existing regulations.

Because other provisions of 353.43 have been added to the statute, they are not restated in these proposed regulations.

Several commentators suggested that the Department adopt a regulation allowing respondents not to report ''downstream'' sales (*i.e.* sales by affiliated parties of merchandise purchased from the respondent) if the quantity of sales to affiliated parties is below a certain threshold percentage of sales to unaffiliated parties. Others suggested, in contrast, that the Department require that downstream sales always be reported. Because factors other than value, such as comparability of sales, affect this decision, neither proposal is reflected in the regulations. However, the Department will continue to consider this important issue, which has implications both for the accuracy of its calculation and the reasonableness of its information requirements. The Department encourages the submission of comments on this matter.

Similarly, several commentators recommended methodologies for determining when a price to an affiliated party should be considered comparable to the price at which merchandise is sold to unaffiliated parties; *i.e.* when a price is at ''arm's length.'' Because of the complexity of this issue, and because the Department's practice in this area is still evolving, the Department has not addressed this issue in these proposed regulations. However, the Department will continue to consider this issue for the final regulations.

Section 351.404

Section 351.404 sets forth in combined form the requirements of sections 773(a)(1)(B) and (a)(1)(C) of the Act regarding whether sales in the exporting country or in a third country may be used as a basis for normal value. This provision modifies §§ 353.48 and 353.49 of the Department's existing regulations.

The antidumping statute has long required the Department in calculating foreign market value (now normal value) to avoid the use of markets in which there are few sales (*i.e.*, markets that are not ''viable''). Paragraph (b)(1) sets forth the general condition under which the Secretary will find a market to be viable, that is, when satisfied that the sales in the exporting or third country market are of sufficient quantity to form the basis for normal value.

Paragraph (b)(2) defines the sufficient quantity standard as satisfied when the aggregate quantity (or value) of foreign like product sold in or to the foreign country is five percent or more of the aggregate quantity (or value) of subject merchandise sold to the United States. Under the prior statute and regulations, viability was established by comparing the quantity of sales in the exporting country to the quantity of sales to all export markets except the United States. In accordance with the URAA, the comparison in paragraph (b)(2) is between sales in the foreign market and sales to the United States.

The URAA also changed the comparison that the Department will make in deciding if the sales in the foreign market are in sufficient quantities. Under prior practice, the comparison was normally made between sales of ''such or similar'' merchandise. Under the URAA, the comparison will be between sales of the foreign like product in the foreign market and sales of subject merchandise to the United States. Some commentators have argued that the Department should measure viability on the basis of categories of merchandise smaller than the foreign like product. However, as other commentators pointed out, the statute is explicit that the Department determine market viability for each respondent on the basis of the aggregate quantity (or value) of the foreign like product. Moreover, the SAA, at 821–22, states that, ''[t]he viability of a market will be assessed based on sales of all merchandise subject to an antidumping proceeding, not on a product-by-product or model-by-model basis.'' Commentators noted that the Department's calculations would become extremely complex if, for a given respondent, the normal value for some U.S. sales were to be based in the home market, while the normal value for other U.S. sales were to be based in a third country. Finally, because basing this test on sales of the foreign like product will require less disaggregated data, it will allow the Department to make the viability determination earlier in the proceeding.

Paragraph (b)(2) reflects the preference contained in the statute for measuring viability on the basis of quantity. Several commentators argued that the Department should retain the flexibility to measure viability on the basis of value. While the Department may use value, the statute provides that value may be used only where quantity is not appropriate. The SAA makes clear, however, that quantity is to be defined broadly, and may be measured on the basis of number of items, weight or such other bases that the Department considers appropriate.

Some commentators have argued that the Department must retain the flexibility to use a test other than five percent. While five percent has long proven to be a satisfactory measure of viability, in unusual situations the Secretary may apply a number less than or greater than five percent. This is consistent with the SAA, at 821, which indicates that such situations will be ''unusual,'' and which reflects the fact that the Department has successfully applied the five percent threshold in the past. It also reflects the need for an early decision with respect to the market in which normal value will be established, because respondents must provide data relative to sales in that market.

Paragraph (c)(1) stipulates that if the Department finds a viable exporting-country market, it will calculate normal value on the basis of prices in that exporting country. If the Department finds that the exporting-country market is not viable, but that a third-country market is viable, it may calculate normal value on the basis of prices to the third country. The use of the word ''may'' in the third country provision reflects the language of section 773(a)(4) of the Act, which provides that the normal value may be the constructed value of the subject merchandise even if a third country market is viable. Paragraph (c)(1) is not intended to address circumstances in which prices must be disregarded because they are below the cost of production, as discussed in connection with section 351.406, below.

Paragraph (c)(2) provides that if the Department finds a viable market, it may decline to calculate normal value on the basis of prices in or to that market in certain circumstances. For both the exporting country and a third country, if parties establish to the Secretary's satisfaction that the particular market situation would not permit a proper comparison, the Department may decline to use sales in the relevant market as the basis for normal value. The SAA, at 822, cites as possible examples of such situations a single sale in the foreign market which meets the five percent threshold, extensive government control over pricing that does not permit competitive forces to affect prices, and differing patterns of demand in the United States and the foreign market. Also, if parties establish to the Secretary's satisfaction that prices to a third country are not representative, the Department may decline to use sales to that country.

As explained above in connection with paragraph (b), normally a finding that the foreign market sales constitute five percent or more of sales to the United States will be considered determinative with respect to the issue of viability. The Department will review another factor only if a party

convincingly demonstrates that that factor mitigates against reliance on the five percent standard. This is in accordance with the Department's experience, the language of the SAA, at 821, and the need for early viability determinations. The SAA explains that ''sales in the home market 'normally' will be considered of sufficient quantity to render the home market viable if they are five percent or more of sales to the United States. The Administration intends that Commerce will normally use the five percent threshold except where some unusual situation renders its application inappropriate.'' Therefore, unless a party presents convincing evidence that some aspect of the market in question is so unusual as to make that market an inappropriate basis for comparison and the five percent test inappropriate, the Department will rely on the results of the five percent test in determining whether the foreign market is an appropriate basis for normal value. Placing primary reliance on the five percent test is also consistent with the need to make the viability determination early in a proceeding so that respondents can provide the necessary sales information and the Department can meet its statutory deadlines.

In furtherance of the need to make viability determinations early in an investigation or review, paragraph (d) references the deadline for filing any allegation (along with all supporting factual information) regarding market viability, including an allegation that one of the exceptions in paragraph (c)(2) applies. That deadline (40 days after a questionnaire is issued) is contained in § 351.301(d)(1). The deadline, while short, is approximately two weeks after the general information response to the questionnaire is normally due. If the Department extends the deadline for responding to that section of the questionnaire, it also will extend the time for making an allegation regarding market viability. Among the allegations covered by §§ 351.301(d) and 351.404(d) are arguments that some number other than five percent should be used to determine viability, or that viability should be determined based on the value, rather than quantity, of sales.

Paragraph (e) outlines factors for consideration when several third country markets are viable. These criteria are slightly modified from those found in § 353.49(b) of the Department's prior regulations. In the past, the Department has most often found that the largest third country market is the best basis for comparison with the United States. However, in a few situations, the Department has discovered that other factors mitigate against selection of the largest market. For example, where sales to a particular third country market are of merchandise that is very similar to that sold to the United States, the use of that third country market may be more appropriate, even if it is not the largest market.

Several commentators argued that the Department should retain the criteria found in the existing regulations for selecting a third country. In this regard, we note that the criterion that sales to the selected third country market be of sufficient quantity is now encompassed in the five percent test, which now applies to third country markets as well as the home market. The criterion that the selected market be like the United States in terms of organization and development is now reflected in the requirement of paragraph (c)(2) that there not be a market situation which prevents a proper comparison. In addition, paragraph (e) provides that the Department may consider other criteria for selection of a third country market that are relevant to a particular case. As in the past, while the Department will consider all relevant criteria, not all of the criteria of this section need be present in the selected market, and none is dispositive.

Paragraph (f), based on § 353.48(b) of the existing regulations, indicates that the Department normally will choose to calculate normal value based on sales to a viable third country market rather than on constructed value. The change in terminology (i.e., the deletion of ''prefer'') is intended to reaffirm that the Department retains the discretion to select constructed value over a third country price-to-price comparison in appropriate circumstances. However, once the Department chooses a comparison market, it will not reexamine the issue of viability. Thus, if the Department finds that it must disregard sales in the selected foreign market of a product that is most similar to the subject merchandise (e.g., because the sales are below cost), the Department will apply constructed value rather than seek sales in another market or use sales of less similar merchandise. This policy is discussed in more detail below in connection with § 351.406 (''comparison of merchandise'').

Section 351.405

Section 351.405 deals with the calculation of normal value based on constructed value, and modifies § 353.50 of the Department's existing regulations.

Under section 773(e)(2)(A) of the Act, as a general rule the Department will base amounts for profit and selling, general and administrative expenses (''SG&A'') on the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale of a foreign like product in the ordinary course of trade. For ease of discussion, this general rule will be referred to as the ''preferred methodology.'' If data regarding a specific company's actual profit and SG&A are not available, section 773(e)(2)(B) of the Act provides three alternative methods for calculating these amounts (the ''alternative methods''). As stated in the SAA, at 840, the statute does not establish a hierarchy or preference among the three alternative methods.

Paragraph (b) clarifies an issue regarding the market that will form the basis for the calculation of profit and SG&A under the preferred methodology and under the alternative methods. Specifically, paragraph (b)(1) provides that in applying the preferred methodology, sales in the country in which the merchandise is produced or a third country, as appropriate, will form the basis for the calculation of profit and SG&A. In contrast, paragraph (b)(2) provides that in applying the alternative methods, only sales in the country in which the merchandise is produced will form the basis for the calculation of profit and SG&A (or in the case of the third alternative method, the basis of the so-called profit cap).

The issue arises because of the use in the statute of identical language that the Department interprets differently in different situations. Specifically, the statute states that with respect to both the preferred methodology and the alternative methods, profit and SG&A shall be based on sales ''for consumption in the foreign country.'' The SAA, at 840, provides that in the context of the three alternative methods, profit and SG&A shall be based on ''home market'' sales; *i.e.*, sales in the country in which the merchandise is produced. Article 2.2.2 of the AD Agreement similarly indicates that with respect to the three alternative methods, the appropriate market is the ''domestic market of the country of origin.'' Both the SAA and the AD Agreement are silent, however, on the market in which to calculate profit and SG&A with respect to the preferred methodology. Therefore, the Department intends to maintain its current practice of using home market or third country sales as the basis for profit and SG&A, as appropriate. Specifically, when an exporter's third country market forms

the basis for normal value and the Department resorts to constructed value due to below-cost third country sales or model matching considerations, the Department will use third country sales as the basis for profit and SG&A. Use of third country sales in these situations is the most accurate and practical approach for both the Department and the respondent.

In practice, the Department can derive an actual amount of profit by subtracting the cost (derived from COP data) from the home market sales price (derived from the home market sales data) to arrive at a net profit for each transaction examined. The Department will use the net profit figures to derive a per unit amount for profit. The Department will derive an ''actual'' amount of G&A by dividing the G&A from a company's financial statements by the cost of goods sold to arrive at a G&A ratio. The Department then will apply this ratio to total cost of manufacture on a per unit basis. The actual amounts for per unit selling expenses can be derived from the home market sales list. This leaves the question of whether the ''actual amounts'' for profit and SG&A should be based on a model-specific or aggregate-figure basis.

One commentator argued that the Department should not calculate SG&A expenses exclusive of those sales that the Department disregards as being below cost, because these expenses rarely relate directly to individual sales. Another commentator, however, argued that SG&A and profit should be obtained from the same, or comparable, pool of sales.

The Department's practice has been to use aggregate figures. Notably, section 773(e)(1)(B) of the pre-URAA statute provided for calculation of an amount for profit and SG&A ''equal to that usually reflected in sales of merchandise of the *same general class or kind* as the merchandise under consideration'' (emphasis added). In comparison, section 772(e)(2)(A) of the amended Act provides for use of the actual amounts incurred and realized for profit and SG&A ''in connection with the production and sale of a foreign like product.'' The use of ''a'' arguably could be interpreted to mean a particular model. The SAA, on the other hand, refers to actual amounts incurred, ''in selling the particular merchandise in question (foreign like product).'' SAA, at 839. This language supports a view that the use of ''a'' was not intended to overturn our prior practice of relying on aggregate figures for profit and SG&A. Moreover, if ''a'' were to be interpreted literally, the Department would have the discretion to pick and choose the sale of the foreign like product from which profit and SG&A would be taken. This clearly would undermine the predictability of the statute. Given these distinctions, the amended Act arguably provides for a narrower basis for the calculation of profit and SG&A than did the prior statute. Therefore, the Department intends to calculate profit and SG&A based on an average of the profits of foreign like products sold in the ordinary course of trade.

Both the pre-URAA statute and the amended Act provide that only sales ''in the ordinary course of trade'' be used as the basis for profit and SG&A. Under section 771(15) of the amended Act, however, the definition of ordinary course of trade has been expanded to require that the Department consider sales disregarded under the cost test to be *outside* the ordinary course of trade. A number of commentators argued that the profit and SG&A calculations should exclude all below-cost sales. The Department believes that automatic exclusion of below-cost sales would be contrary to the new statute. Specifically, in calculating profit and SG&A under the preferred and second alternative methods, the statute allows for exclusion of sales outside the ordinary course of trade. The statutory definition of ordinary course of trade, in turn, provides that only those below-cost sales that are ''disregarded under section 773(b)(1)'' of the Act are automatically considered to be outside the ordinary course of trade. In other words, the fact that sales are below cost does not automatically trigger exclusion; rather, the sales must have been disregarded under the cost test before they will be excluded from the calculation of profit and SG&A.

A number of commentators argued that the regulations should provide representative examples of sales that would be disregarded as not being in the ordinary course of trade, such as sales with abnormally high profits. One commentator suggested that the regulations define ''abnormally high profits.'' Another commentator, in contrast, argued that no sale should be disregarded because of abnormally high profits unless an affirmative showing is made on a sale-by-sale basis that the price was not set by normal market forces. The SAA, at 839–840, and 834, indicates that the Department could consider sales with abnormally high profits to be outside the ordinary course of trade, along with sales of off-quality merchandise, sales to affiliated parties not at arm's-length prices, sales of merchandise produced according to unusual product specifications, merchandise sold at aberrational prices and merchandise sold pursuant to unusual terms of sale. The Department does not believe that it is appropriate to include these examples in the regulations. As implied by the statute and the SAA, the Department has the discretion to consider sales and transactions, other than those specifically cited, to be outside the ordinary course of trade. The Department believes that it is more appropriate to make these ordinary course of trade determinations on a case-by-case basis.

A number of commentators proposed that the regulations should adopt a *de minimis* profit level of two percent, and that where the profit amount calculated by the Department using one methodology is *de minimis*, the Department should rely on an alternative methodology. The Department has not adopted this proposal. The new statute specifically eliminates the prior statutory minimum for profit, and, instead, requires the use of the ''actual'' amounts incurred and realized by a specific exporter or producer. Nowhere does the new statute authorize the Department to establish a new *de minimis* rule requiring the Department to reject an alternative for calculating profit if that alternative results in a low amount for profit.

As discussed above, section 773(e)(2)(B) of the Act provides for three alternative methods if data regarding a specific company's actual profit and SG&A are not available. One commentator suggested that the regulations should clarify the point at which the number of sales in the ordinary course of trade would be so small that the Department would disregard actual data in favor of an alternative method to calculate profit and SG&A. Another commentator argued that the regulations should provide that when actual data is not available for the calculation of profit, the Department must base its profit calculation on the company's financial records. Still another commentator argued that the regulations should clarify that only in exceptional circumstances will the Department resort to other producers' profits when calculating a respondent's profit. Finally, a number of commentators argued that the third alternative (''any other reasonable'' method) should be the company-wide profitability for the respondent in question for the most recent fiscal year, and that the Department should use this alternative only where profit cannot be determined under either of the other two

alternatives. As discussed above, the SAA, at 840, makes clear that the statute does not establish a hierarchy or preference among the three alternative methods, and that selection of an alternative must be made on a case-by-case basis. No one approach would be appropriate necessarily for use in all cases. As stated in the SAA, at 841, ''the Administration does not believe that it is appropriate at this time to establish particular methods and benchmarks for applying [the third] alternative [method].'' As the Department still has not had enough experience in this area to develop a practice, the Department believes that it is inappropriate to adopt these suggestions.

Under alternative methods one and three, profit and SG&A would be based on sales of products in the ''same general category of products as the subject merchandise.'' The SAA, at 840, indicates that this would be consistent with the existing practice of relying on a producer's sales of products in the same ''general class or kind.'' In addition, the SAA, at 840, indicates that the term ''general category of merchandise'' encompasses a category of merchandise broader than the term ''foreign like product.'' As a result, the Department intends to establish appropriate general categories on a case-by-case basis.

The SAA, at 841, provides that the Department should not require companies to submit all data necessary to apply each alternative. For example, the SAA states that the Department will not require a company which has provided profit information on its own sales of the particular foreign like product also to submit profit information on its sales of the same general category of products solely to enable the Department to use the latter information to calculate profit for a different company. One commentator suggested that the regulations reaffirm the commitment in the SAA that the Department will not make burdensome information requests about profits in the context of calculating constructed value. The commentator proposed, in particular, that the Department should pledge to use audited and readily-available profit data. However, a number of commentators expressed concern that respondents not be allowed to unilaterally determine what profit information to submit, and suggested that respondents be required to submit additional key information, including profit and loss operating statements, charts of accounts, and information demonstrating the company's cost of capital. One commentator argued that the regulations should require full cost reporting by all companies under investigation (or review) so that alternative two would be a viable option. Given the directive to refrain from requiring excessive additional reporting of data, the Department believes that it would be premature to adopt these proposals. As a practical matter, over time the Department will gain experience as to the appropriate type and quantity of data to request.

Section 351.406

Section 351.406 is new, and deals with the analysis of whether to disregard certain sales as below the cost of production under section 773(b) of the Act.

The Cost Test: Section 773(b)(1) of the Act provides that the Department may exclude below-cost sales from the determination of normal value if such sales occurred within an extended period of time in substantial quantities, and were not at prices which permit recovery of all costs within a reasonable period of time.

Paragraph (b) clarifies that the phrase ''extended period of time'' normally will coincide with the period over which sales under consideration for use in the calculation of normal value were made; *i.e.*, the period of investigation or review. Most comments on this issue were in accord with this approach. One commentator, however, stated that while there was a certain practical appeal to this approach, it would be more prudent for the Department to interpret the phrase ''extended period of time'' on a case-by-case basis. The SAA, at 831–32, states that for purposes of computing the quantity of below-cost sales, the Department will examine sales during the entire period of investigation or review. Thus, the SAA suggests that ''an extended period'' of time is intended to coincide with the investigative or administrative review period, as appropriate.

Two commentators raised the issue of whether below-cost sales must be made continuously throughout the period in order for the Department to consider such sales to have been made ''within an extended period of time.'' These commentators posed a scenario wherein a substantial quantity of below-cost sales were made during a single month of a twelve-month review period, and questioned whether, in such an instance, the Department would have a sufficient basis for disregarding those sales. Other commentators argued that, consistent with the SAA, the Department no longer was required to find that below-cost sales occurred in a minimum number of months before excluding such sales from its analysis. According to these commentators, the Department must disregard substantial quantities of below-cost sales even if made in only one month of the period of investigation or review.

The SAA, at 831–32, states that because below-cost sales need only occur ''within'' an extended period of time, the Department no longer must find that such sales occurred in a minimum number of months during the period. Thus, where the below-cost sales found during one month of the period meet the other requirements of the cost test (*i.e.*, substantial quantities and cost recovery), the Department would exclude such sales from its analysis.

Although not further addressed in these regulations, section 773(b)(1)(A) of the Act also requires that the Department determine whether below-cost sales have been made in substantial quantities. Under section 773(b)(2)(C)(i) of the Act, the Department will consider below-cost sales to have been made in ''substantial quantities'' if they account for 20 percent or more of the volume of sales under consideration for normal value. Under section 773(b)(2)(C)(ii) of the Act, the Department also may find below-cost sales to be in substantial quantities if the weighted average per unit price of the sales under consideration is less than the weighted average per unit COP of those sales.

In most cases, the Department intends to apply the 20 percent test in identifying those instances in which respondents sold substantial quantities of the merchandise at below-cost prices. In cases involving highly perishable agricultural products, however, the Department intends to apply the other substantial quantities benchmark (the weighted average price-to-cost test), which closely corresponds to the Department's previous substantial quantities benchmark for below-cost sales in cases involving highly perishable agricultural products. The Department's prior practice reflected the nature of perishable agricultural products, which often must be sold at below-cost prices in large quantities as the products begin to grow old and spoil.

Comments on the issue of substantial quantities were split. Some commentators argued that both substantial quantities tests should be applied in all cases. Other commentators maintained that under normal circumstances, the Department should apply only the 20 percent benchmark. These commentators contend that the language of the SAA limits the use of the weighted average

benchmark strictly to cases involving highly perishable agricultural products.

The SAA, at 832, states that the new weighted average price-to-cost benchmark, like the old 50 percent rule, is intended to account for the unique situation that exists with regard to below-cost sales of highly perishable agricultural products. As a result, the Department intends to apply this benchmark normally only in cases involving highly perishable agricultural products. However, because there may be other circumstances in which it would be appropriate to apply the weighted average price-to-cost benchmark, the Department has not established a bright line rule that would limit the use of this benchmark to cases involving highly perishable agricultural products.

Finally, in determining whether to exclude below-cost sales from the calculation of normal value, section 773(b)(1)(B) of the Act requires that the Department determine whether such sales, ''were not at prices which permit recovery of all costs within a reasonable period of time.'' New section 773(b)(2)(D) of the Act clarifies that prices shall be considered to provide for recovery of costs within a reasonable period of time if such prices which are below cost at the time of sale are above the weighted average per unit cost of production for the period of investigation or review. Under the statute, therefore, the Department's cost recovery test must consist of an analysis involving individual prices for specific below-cost sales transactions. This is consistent with the position taken by a number of commentators.

Regarding cost recovery, several commentators also made suggestions concerning the issue of adjustments to cost for ''periodic temporary disruptions to production'' and the treatment of ''unforeseen disruptions in production.'' The SAA, at 832, provides that before testing for cost recovery, the Department may adjust COP to take account of variations in per unit costs caused by ''temporary disruptions to production that occur on a less frequent than annual basis.'' The SAA cites major maintenance that occurs every three years as an example of such a temporary disruption, and notes that the respondent must demonstrate that the disruptions have ''recurred at regular and predictable intervals.'' The SAA also provides special treatment for unforeseen disruptions to production that are beyond the respondent's control. Here, the SAA cites as an example the destruction of respondent's production facilities by fire, and states that the Department will continue to adjust for such disruptions by relying on costs computed at a time prior to the unforeseen event.

One commentator submitted draft regulations outlining the above concepts from the SAA with regard to periodic disruptions in production and their effect on cost recovery. In response to this submission, another commentator argued that the proposed draft language was too restrictive of respondents' ability to demonstrate that below-cost sales should not be disregarded.

The Department believes that determinations involving periodic temporary disruptions to respondents' production costs are fact-specific in nature, and that while regulatory examples of such disruptions might give some guidance, they also might be interpreted as limiting the types of circumstances for which the Department will consider an adjustment. Moreover, in computing cost of production, the Department typically allows respondents to amortize or otherwise adjust for costs associated with major maintenance or other periodic activities that disrupt production. Thus, regulations providing specific examples of temporary disruptions might be interpreted as limiting these types of adjustments solely to the cost recovery analysis. The Department, therefore, has not included in its regulations specific provisions concerning adjustments to costs for periodic temporary disruptions in production. Nor do the regulations include any discussion of how the Department intends to treat costs associated with unforeseen disruptions in production. To do so in the context of cost recovery would conflict with explicit guidance given in the SAA, at 832, which states that the issue of unforeseen disruptions in production is ''not a matter of cost recovery.''

Initiation of Below-Cost Sales Investigation: The Department received several comments on the standard for determining whether an allegation of sales below cost provides reasonable grounds to initiate an investigation of sales below cost. These comments are discussed above in connection with section 351.301(d)(2).

Below-Cost Sales Disregarded and Ordinary Course of Trade: Section 773(b)(1) of the Act provides that where below-cost sales have been disregarded, the Department will base normal value on the remaining sales of the foreign like product made in the ordinary course of trade. However, if there are no remaining sales made in the ordinary course of trade, the Department will base normal value on constructed value. The Department's past practice was to disregard all sales of a product if below-cost sales exceeded 90 percent of the total sales quantity of the product. Under section 773(b)(1) of the Act, however, the Department is required to use any existing above-cost sales to compute normal value if such sales were made in the ordinary course of trade. Additionally, the SAA, at 833, states that only where there are no above-cost sales in the ordinary course of trade will the Department resort to constructed value as the basis for normal value.

Under section 771(15) of the Act, the term ''ordinary course of trade'' encompasses those below-cost sales that meet the criteria of section 773(b)(1) of the Act. Thus, in most instances, the Department will disregard such sales and compute normal value using only the remaining above-cost sales. The SAA, however, describes two circumstances under which this general rule may not apply.

The first circumstance involves sales of obsolete or year-end merchandise. The SAA, at 833, notes that sales of such merchandise are often made at below-cost prices. Despite this fact, the SAA explains that it is appropriate to use these below-cost sales as the basis for normal value where the merchandise exported to the United States is similarly obsolete or end-of-model year. The second circumstance, while not explicitly stated in the SAA, involves above-cost sales made outside the ordinary course of trade. The SAA, at 834, provides examples of sales that the Department might consider as being outside the ordinary course of trade. These include sales made at aberrational prices or with unusual terms of sale. Although such sales may pass the COP test under section 773(b)(1) of the Act, the Department normally would exclude them from the calculation of normal value. The Department has incorporated examples of sales that may be considered outside the ordinary course of trade as defined in § 351.102 of the regulations.

The Department received proposals from several commentators concerned about the determination of below-cost sales as outside the ordinary course of trade. Two of these commentators expressed the opinion that below-cost sales are a fundamental business reality, and, as such, companies set prices to obtain a reasonable return in the aggregate for their product line. The two commentators suggested that to account for this phenomenon in its antidumping analysis, the Department should adopt a two-tier test for substantial quantities. Under the first tier, the Department would look to see if below-cost sales in the comparison market were, in

aggregate, greater than twenty percent of all such sales. If so, the Department would determine that the overall pattern of sales in the comparison market were not in the ordinary course of trade, and then would apply the twenty percent substantial quantities benchmark to comparison market sales on a model-specific basis.

This suggestion drew sharp criticism from a number of other commentators, who maintained, among other things, that the exclusion test for sales below cost is to be applied on a model-specific basis. The Department agrees with these commentators that the proposed two-tier test would not be consistent with the SAA, at 832, which states that ''the cost test will generally be performed on no wider than a model-specific basis.'' Many of the commentators opposing the two-tier test recommended that the Department state in its regulations its intent to continue use of a model-specific cost test. The Department believes that such a regulation is not necessary, because the Department has used a model-specific cost test as part of its practice for a number of years, and has no intention of changing its practice on this issue.

The Department also received many comments relating to the use of remaining above-cost sales as the basis for normal value. Some commentators recommended that the Department's regulations reflect the language of the statute and the SAA by providing for the use of constructed value only where there were no comparison market sales made in the ordinary course of trade. Other commentators, however, urged the Department to avoid setting arbitrary and inflexible standards for determining when above-cost sales must be used to establish normal value. These commentators claimed that where there are only a few aberrational, high-priced sales above-cost, such sales may be totally unrepresentative as a basis for normal value. To avoid this problem, one of the commentators suggested that the Department use statistical concepts to identify when the price of a particular transaction is so far from the average price as to be deemed not in the ordinary course of trade.

In rebuttal, certain commentators argued that the Department should not exclude from consideration for normal value small numbers of above-cost sales simply because such sales were made at high prices. According to these commentators, any above-cost sales made in the ordinary course of trade should be used to compute normal value. The commentators further argued that the Department should reject the ''simple statistical'' tests proposed by other commentators, because this approach is contrary to the usual practice of examining a wide host of factors to determine whether sales are in the ordinary course of trade.

Section 773(b)(1) of the Act indicates that the Department is to disregard sales made outside the ordinary course of trade when computing normal value. In addition, section 773(b)(1) of the Act provides for the use of constructed value only where there are no above-cost sales remaining in the ordinary course of trade. However, in cases where the few remaining above-cost sales are made at aberrationally high prices, the SAA provides that these sales may be excluded from consideration for normal value if they are determined to be outside the ordinary course of trade. This determination typically will depend on specific facts regarding the product, the industry, the terms of sale, and any number of other considerations, including, perhaps, statistical analyses of prices. Thus, to base the ordinary course of trade analysis solely on statistical concepts would be inappropriate, at least at this time. Moreover, without the experience that comes from actual cases, it would be foolhardy to define specific criteria for deciding which above-cost sales are ''aberrational'' and which are in the ordinary course of trade.

Finally, one commentator suggested that before conducting its cost analysis, the Department should exclude sales made outside the ordinary course of trade (other than below cost sales). This commentator argued that including such sales in the below-cost test effectively double-counts the sales not made in the ordinary course of trade. Commentators opposing this suggestion stated that it is not in accordance with the new statute. The Department agrees that this suggestion is not supported by the statute. Section 773(b)(1) of the Act instructs the Department to determine whether sales of the foreign like product have been made at less than the cost of production. Nowhere does the statute suggest that the Department should perform its cost analysis only on sales in the ordinary course of trade.

Comparison of Merchandise: Two commentators suggested that the regulations provide the Department with the alternative of using the next most similar category of products for comparison purposes, rather than automatically resorting to the use of constructed value (''CV'') when there are no above-cost sales for a particular model. In opposing this recommendation, one commentator argued that, in accordance with the statute, product matching occurs without regard to the exclusion of below-cost sales.

Under section 773(a) of the Act, the Department is authorized only to compare the merchandise under investigation to the foreign like product. The suggestion of one commentator that where the most similar merchandise can not be used for comparison because there are insufficient sales above the cost of production, the Department may use less similar merchandise as comparison models is incompatible with the statutory scheme. Section 771(16) directs the Department to base its comparisons on the first of three categories in which there is merchandise that may be satisfactorily compared with the subject merchandise (*see* section 771(16) of the Act, with respect to which the only change brought about by the URAA was the substitution of the term ''foreign like product'' for the term ''such or similar merchandise''). Most favored is ''merchandise which is identical in physical characteristics'' and ''produced in the same country by the same person'' as the merchandise under investigation. If there were no sales of merchandise with identical physical characteristics, the Department must select merchandise that meets the conditions set forth in section 771(16)(B) of the Act; *i.e.*, like the merchandise under investigation and approximately equal in commercial value. If no merchandise qualifies under section 771(16)(B), the Department must select merchandise that meets the conditions set forth in section 771(16)(C) of the Act; *i.e.*, of the same general class or kind, similar in use, and reasonably comparable with the merchandise under investigation. The Department would subvert this statutory scheme if it did not use the first category in which there were sales; for example, by making a comparison with ''similar'' merchandise even though the respondent had sales of identical merchandise. Moreover, adopting the proposed methodology effectively would add an additional criterion to 771(16); namely, that merchandise in the category selected must be sold above cost in sufficient quantity. As the CIT has explained in upholding the Department's policy under prior law, ''[o]nce the model matches are established and the COP test is completed, Commerce is not required to reexamine all of the undifferentiated model data in order to make new matches and price comparisons on the basis of whatever subset of lower-ranked such or similar merchandise survives

the COP test.'' *Zenith* v. *United States*, 872 F. Supp. 992, 1000 (CIT 1994). *See also* Policy Bulletin 92/4, ''The Use of Constructed Value in COP Cases,'' for a detailed discussion of this issue.

One commentator recommended that for purposes of computing COP and CV, the Department should rely on the product categories that a respondent uses in its normal course of business. Several commentators opposed this recommendation, stating that costs are to be computed based on the same product categories established by the Department for model matching. The Department's practice is to calculate costs consistent with the model matching criteria it develops outset of an investigation or review, after having received the views of the parties. The product categories developed in such fashion generally account for significant differences in actual costs affecting price. The Department intends to continue this practice because it prevents any manipulation of the cost analysis through changes in internal product classifications.

Section 351.407

Section 351.407 contains special rules for the allocation of costs and the calculation of CV and COP in situations involving startup operations.

Allocation of Costs: Paragraph (b) provides that the Department will consider various factors associated with the production and sale of the subject merchandise and the foreign like product in order to ensure that the method used to allocate production costs reasonably reflects and accurately captures all of the producer's actual costs. Paragraph (b) specifically mentions two factors, production quantities and relative sales values, that the Department may take into account in judging whether common production costs (including costs incurred as part of a joint manufacturing process) have been allocated among products on an appropriate basis. As has been its practice in the past, however, the Department may weigh other significant qualitative and quantitative factors concerning the production of the merchandise in question to ensure that a producer has reported a representative measure of the materials, labor, overhead, and other costs associated with the subject merchandise and the foreign like product.

Startup Costs: Startup costs are addressed in paragraph (c). Under section 773(f)(1)(C)(ii) of the Act, the Department may make an adjustment for costs relating to startup operations only if the following two conditions are satisfied:

(1) A producer is using new production facilities or producing a new product that requires substantial additional investment, and

(2) production levels are limited by technical factors associated with the initial startup phase of commercial production.

For good reason, these conditions are somewhat generalized, because they must allow for any number of startup operation scenarios. The Department recognizes the fact-specific nature of the startup adjustment, and realizes that much of the guidance for implementing the adjustment will come from future case work. Nevertheless, the Department believes that the regulations offer an opportunity to furnish parties with additional clarification of those circumstances that qualify as startup operations and those that do not. To achieve this goal, while at the same time keeping the definition of startup clearly within the bounds intended by Congress, the Department has incorporated into the regulations concepts from the SAA, at 836–838, that help to define startup operations and explain the startup adjustment.

Definition of startup: Paragraph (c)(1) includes definitions for ''new production facilities'' and ''new products,'' as well as guidance on whether improvements to products or facilities and expansion of capacity qualify as startup operations. The Department received a number of comments concerning the definition of startup. For the most part, the commentators fell into two camps—those who believed that startup should be ''narrowly defined'' in the regulations, and those who rejected this approach. In either case, the commentators did not provide substantive definitions that differed in any significant way from those adopted by the Department. Rather, their thoughts on whether or not to craft the regulations ''narrowly'' related to issues of implementation and burden of proof, both of which are discussed separately below.

In addition to the comments described above, the Department received comments on two other issues regarding the startup definition. With respect to the first issue, one commentator argued that the term ''new product'' does not refer to ''improved'' products or to new-model-year versions of products, and recommended that the Department's regulations reflect this premise. According to the commentator, ''new products'' must have completely new designs or require the use of new facilities or ''substantial additional investment'' to existing facilities. Another commentator wrote to reject this position, stating that, while the SAA clearly intends to exclude from startup any incrementally improved products, it does not prohibit new-model-year versions from qualifying as ''new products'' where they satisfy the definition of a startup. The Department agrees with the latter commentator. There is no basis in the statute or SAA to specifically exclude new-model-year products or ''improved'' products where their production otherwise meets the startup criteria.

With respect to the second issue, two commentators recommended that the Department include an additional condition to the startup analysis. These commentators maintained that no startup adjustment should be allowed where, based on a comparison of prices and costs in the startup period, the Department finds that the respondent has adjusted its prices upward to reflect the higher startup costs. The Department has rejected this proposal, because neither the statute nor the legislative history provides for this approach.

Demonstrating entitlement to a startup adjustment: Although the statute does not provide any specific guidance regarding the burden of establishing entitlement to a startup adjustment, the SAA, at 838, makes clear that the burden is on the party seeking the adjustment:

> Specifically, companies must demonstrate that, for the period under investigation or review, production levels were limited by technical factors associated with the initial phase of commercial production and not by factors unrelated to startup, such as marketing difficulties or chronic production problems. In addition, to receive a startup adjustment, companies will be required to explain their production situation and identify those technical difficulties associated with startup that resulted in the underutilization of facilities.

Importantly, however, the SAA notes that the burden imposed for startup adjustments is consistent with the Department's approach to adjustments in general. Thus, in demonstrating to the Department that a startup adjustment is warranted, respondents will be held to the same legal and factual standards that apply to all other adjustments in an antidumping analysis.

The Department received a number of comments regarding this ''burden of proof'' issue. Although virtually all of the commentators recognized that the burden of establishing entitlement to an adjustment fell on the party making the claim (in all likelihood the respondent), there was significant disagreement as to

the evidentiary standard that the Department should apply in considering whether to grant a startup cost adjustment. Those commentators seeking to limit the availability of the startup adjustment claimed that in considering whether to grant an adjustment, the Department's regulations must hold respondents to a rigid evidentiary standard. They reasoned that because the startup provision constitutes an exception to the cost of production/constructed value section of the statute, the Department should grant an adjustment only in limited circumstances. This would ensure that, in the words of the SAA, at 835, the startup adjustment did not provide respondents with a ''license to dump.''

The Department believes that, contrary to the commentators claims, this statement from the SAA is not intended to place a higher-than-normal burden on parties. Instead, the statement merely advocates strict enforcement of the startup provision, and advises the Department to grant adjustments only in those circumstances where they are warranted.

The Department also received recommendations from two commentators that wished to reduce the burden of proof below that applicable to other adjustments. The first commentator suggested that the Department's regulations provide that once a respondent has made a *prima facie* case of entitlement to a startup adjustment, the Department would make the adjustment unless there was clear and convincing evidence that factors other than startup affected sales volumes. In addition, the commentator recommended that the regulations impose an early deadline, following the request for a startup adjustment by respondent, by which the Department must: (1) Decide precisely what additional information a respondent must supply to support a claimed startup adjustment, and (2) decide whether an adjustment is appropriate. The second commentator took a somewhat less radical (but still far-reaching) approach in recommending that the Department interpret the burden on respondents as a ''burden of production'' rather than a ''burden of proof.'' This commentator explained that the term ''burden of production'' meant that a respondent has the responsibility for cooperating in the proceeding and producing whatever evidence is available to support its claim. By contrast, according to the commentator, the ''burden of proof'' meant that the respondent had the ultimate burden of persuasion in convincing the Department of its entitlement to a startup adjustment.

The Department has not adopted these recommendations. Again, according to the SAA, the burden of proof undoubtedly rests with the party seeking a startup adjustment. Therefore, it is incumbent upon that party to (1) prove that the startup conditions of section 773(f)(1)(C)(ii) of the Act existed during the period of investigation or review, and (2) as with any antidumping adjustment, document that fact to the Department's satisfaction.

Duration of the startup period: Under section 773(f)(1)(C)(ii) of the Act, the startup phase ends at the time commercial production levels have been achieved. Commercial production levels themselves, however, represent a somewhat nebulous benchmark. Therefore, in gauging the end of the startup period, the statute instructs the Department to consider factors unrelated to startup operations that also may affect a respondent's production volumes. These factors include market demand, product seasonality, and business cycles. Section 773(f)(1)(C)(iii) of the Act further provides that the benchmark commercial production levels are to be characteristic of the merchandise, producer, or industry concerned.

It is clear from the statute that measurement of commercial production volumes (and, thus, determination of the end of the startup period) is dependent on a range of factors specific to the product or industry under consideration. This concept is also expressed in the SAA, at 837, which states:

> The Administration recognizes that the nature and timing of startup operations will vary from industry to industry and from product to product, and that any determination of the appropriate startup period involves a fact-intensive inquiry * * *. For this reason, the Administration intends that Commerce determine the duration of the startup period on a case-by-case basis.

However, while the duration of the startup period is to be evaluated based on the facts of each case, the SAA does provide guidance regarding the type of evidence that the Department will examine and the factors it should consider in making its determination. The SAA, at 836–37, instructs the Department to first examine the actual production experience for the merchandise in question in determining when a company reaches commercial production levels. In addition, the SAA states that the Department should consider other information, including ''historical data reflecting the same producer's or other producer's experiences in producing the same or similar products.'' The SAA makes clear, however, that the Department should ascribe little weight to a producer's projections of future production volumes or costs. Lastly, the SAA notes that the Department must consider those factors described in the statute that are unrelated to startup operations but that may affect production volumes. Again, these include product demand, seasonality, and business cycles. These factors are reflected in paragraphs (c)(2) and (c)(3). Furthermore, consistent with the SAA, paragraph (c)(4)(i) provides that the Department will determine the duration of the startup period on a case-by-case basis.

The Department received relatively few recommendations regarding the duration of the startup period. This perhaps reflected the commentators appreciation of the fact-intensive nature of the startup period determination. Most commentators that did provide recommendations generally urged the Department to incorporate the statutory language into the regulations. Certain commentators suggested that the regulations reflect the SAA stipulation that attainment of peak production levels will not be the standard for identifying the end of the startup period. This is consistent with paragraph (c)(2)(i).

One commentator argued that the startup period should be ''narrowly conscribed,'' but did not offer any direct suggestions as to what this meant or how it should be achieved. The Department believes, however, that the statute does not provide for a narrow interpretation of the startup period. Rather, the intent of the statute is to determine the duration of the startup period based on the specific facts of each case.

Method of adjusting for startup costs: Section 773(f)(1)(C)(iii) of the Act sets forth the basic methodology for making startup adjustments. According to this section, where the essential conditions of startup have been satisfied, the Department will adjust for startup operations by ''substituting the unit production costs incurred with respect to the merchandise at the end of the startup period for the unit production costs incurred during the startup period.'' Section 773(f)(1)(C)(iii) further provides that in situations where the startup period extends beyond the period of investigation or review, the Department will base any startup adjustment on ''the most recent cost of production data that it reasonably can obtain, analyze, and verify without

delaying the completion of the investigation or review.''

Given the variety of products and diverse industries investigated by the Department, the statutory instructions under section 773(f)(1)(C)(iii) of the Act provide a reasonably comprehensive framework for implementing the startup adjustment methodology. The Department believes that any attempt to further define the adjustment methodology runs the risk of limiting the Department's ability to consider the facts of each case in adjusting for startup costs.

Likewise, in those instances where the startup operations extend beyond the period of investigation or review, the regulations do not impose time limits on the acceptance of relevant cost of production data beyond those already set forth in the statute. Instead, the Department will evaluate its ability to obtain, analyze, and verify such data on a case-by-case basis. Moreover, the regulations do not limit the type of data that may be used to adjust production costs for extended startup periods. For example, where the startup operations involve a new manufacturing facility, the appropriate adjustment methodology may require deriving surrogate costs based on identical merchandise manufactured at a previously existing facility.

Costs included in the startup adjustment: As explained in the SAA, at 837, in adjusting production costs for startup operations, the Department ''will consider unit production costs to be items such as depreciation of equipment and plant, labor costs, insurance, rent and lease expenses, materials costs, and overhead.'' The SAA further notes that ''sales expenses, such as advertising costs, or other non-production costs, will not be considered startup costs because they are not directly tied to the manufacturing of the product.'' The Department believes that these examples from the SAA provide helpful guidelines in determining which types of costs qualify as production costs for which a startup adjustment may be allowed. Therefore, they are reflected in paragraph (c)(4)(iii).

Despite the clear language of the SAA, some commentators have suggested that adjustments for startup operations should take into account only variable production costs, excluding altogether any fixed production costs that may have been incurred during the startup phase. This proposal is inconsistent with the SAA, which does not limit qualified startup costs to variable costs only. Indeed, several of the eligible cost categories identified in the SAA—depreciation, insurance, rent and lease expenses, and (in some instances) overhead—are typically regarded by the Department as fixed costs. Moreover, the fact that production levels are limited during the startup period means that, in most instances, the per unit fixed costs will be affected to a greater extent by startup operations than will the per unit variable costs during the same period. Thus, the Department has rejected the proposal that the startup adjustment be limited to variable production costs only.

Amortization of startup costs: In general, the adjustment for startup operations calls for the replacement of high, per-unit production costs incurred during startup operations with lower costs from a period subsequent to the startup phase. Under this methodology, however, a portion of the actual startup costs remains unaccounted for as a result of the startup adjustment. Although the statute is silent on how to treat this difference between actual costs and surrogate costs calculated for startup, the SAA, at 837, states that such deferred costs are to be amortized over a reasonable period of time. The SAA further provides that the amortization period should begin subsequent to the startup phase and extend over the life of the startup product or machinery. Paragraph (c)(4)(ii) reflects the language in the SAA by providing that where startup operations relate to a new product, the Department, in most cases, will look to documentation regarding the estimated life of that product to determine the appropriate amortization period for excess startup costs. Where startup operations relate to a new production facility, the Department normally will determine the proper amortization period based on reasonable estimates of the useful lives of new production equipment.

Several commentators suggested that the amortization period for deferred costs must be ''relatively short and immediate'' in all cases. In addition, one of the commentators maintained that the amortization period must commence at the beginning of the startup phase, while another commentator claimed that the period for amortization could not extend beyond the period of investigation or review. The Department disagrees with the suggestion that the startup cost amortization period must be short and immediate in all cases, because there is no support for this suggestion in either the statute or the SAA. Instead, the length of the amortization period depends on the specific facts of each case and may vary greatly depending on a number of factors, including a respondent's past production experience and commercial practices within the industry under investigation or review.

The Department also has not adopted a proposal that (1) the startup amortization period must commence at the beginning of the startup phase, and (2) the amortization period may not exceed the period of investigation or review. Regarding the first point, the SAA states that the amortization period is to begin subsequent to the startup phase. With respect to the second point, the SAA states that the amortization period for deferred startup costs should reflect the life of the product or machinery, as appropriate. The SAA gives no indication that the amortization period must not extend beyond the period of investigation or review. In fact, it is entirely conceivable that the life cycle of a particular product or piece of machinery (and, thus, the amortization period for deferred startup costs) could span several segments of a single proceeding.

Recognition of previously incurred startup costs: Two commentators suggested that the Department adopt regulations to discourage selective use of the startup adjustment, as well as to provide for more equitable treatment of startup costs in general. To achieve these objectives, the commentators recommended that the Department disallow startup claims where a respondent does not also amortize startup costs for other products covered by an order. As one of the commentators explained in relating startup costs to other types of non-recurring costs:

> [T]he treatment of any non-recurring costs should provide for an equitable approach that adds non-recurring costs to later sales as well as deducting them from current sales. Thus, if certain types of non-recurring costs incurred during the investigation period are to be reduced and not fully attributed to that period, then similar non-recurring costs from before the period should be allocated in a similar manner and added to the costs during the period.

Under the commentator's proposed accounting methodology, the Department presumably would require a respondent seeking an adjustment for startup operations to recognize an amortized portion of similar startup costs previously incurred on all other products and facilities that had undergone startup prior to the period of investigation or review. Thus, as a condition for receiving a startup adjustment for one product, a respondent would have to show that it had accounted in a like manner for the startup costs incurred with respect to all other products sold during the period.

The Department does not find the above accounting requirement to be an

appropriate condition of startup. There is no such requirement in either the statute or the SAA. Moreover, the Department believes that requiring a respondent to account for all past startup costs as a precondition to receiving an adjustment for startup costs incurred during the period of investigation or review would discourage respondents from seeking a startup adjustment in those circumstances where an adjustment is appropriate. Under such a requirement, the burden placed on respondents would be too great, requiring them in many instances to look to detailed accounting records of old product lines and facilities that, for practical business reasons, may long since have been discarded.

Nonrecurring Costs: New section 773(f)(1)(B) of the Act states that the Department will adjust COP and CV for those nonrecurring costs that benefit current or future production periods. The SAA, at 835, notes that the provisions of section 773(f)(1)(B) of the Act are consistent with the Department's past practice, which associated expenditures with production of the merchandise during the period or periods benefitted by those expenditures.

Two commentators suggested that the Department establish regulations clarifying that nonrecurring costs treated as non-operating or extraordinary expenses by a company should be included in the cost of production only if those costs benefit current or future production. The commentators suggested that the Department's regulations state that to the extent such costs do benefit current or future production, they should be included in COP and CV by allocating the costs over the production they benefit. The commentators added that, in some instances, this may entail the amortization of the costs over periods longer than the period of investigation or review. Another commentator stated that while it did not object to the proposal for regulations clarifying the treatment of nonrecurring costs, the Department also should require respondents to provide information and data for nonrecurring costs incurred before the period of investigation or review. This commentator noted that the Department could then include in COP and CV the previously incurred costs if such costs benefitted production during the period of investigation or review. Finally, another commentator urged the Department to reject the proposed regulations for treatment of nonrecurring costs. The commentator stated that the Department should continue to examine nonrecurring costs on a case-by-case basis.

As the Department has learned in past cases, it is not always easy to determine whether (and to what extent) a particular expenditure benefits current or future production periods. In virtually all instances, the Department must analyze the expenditure in light of any number of specific factors in the case. For example, the SAA, at 835, cites pre-production research and development (R&D) costs as an example of nonrecurring costs that could benefit current or future periods. However, there is no guarantee that such costs, if incurred to develop a new product or production process, would hold any future benefit to a company. To the contrary, after many months of costly research, a manufacturer could find its new product technologically useless due to the efforts of its competitors. In that case, the amounts incurred for R&D would not benefit the producer in terms of future product sales. Under these circumstances, the R&D expenditures must be recognized as an expense in the year incurred rather than amortized to some future periods.

Because of the fact-specific nature of determinations involving nonrecurring costs, the Department has not drafted any regulations to implement section 773(f)(1)(B) of the Act. Examples of nonrecurring costs in the regulations would not prove helpful to parties, because there are many unique categories of expenditures to consider in a variety of industries. Moreover, depending on the circumstances, a particular expenditure in one case could provide the producer a future benefit, whereas the identical expenditure made by another producer in a different case may provide no benefit at all. Thus, including specific examples of nonrecurring costs in the regulations might create confusion for parties.

The Department believes that a respondent's accounting treatment of a particular expenditure is one factor to consider in determining how that expenditure should be treated for purposes of computing COP and CV. It is by no means dispositive, however. With regard to the suggestion that the Department account for nonrecurring costs incurred in prior periods, the Department believes that it is unnecessary for the Department to make this a regulatory requirement. Instead, the Department will examine on a case-by-case basis whether to account for such previously-incurred costs where they benefit production during the period of investigation or review.

Major Input Rule: Section 773(f)(3) of the Act (which replaces old section 773(e)(3)) contains the ''major input rule.'' Under this rule, the Department may examine transactions between affiliated producers and suppliers for purchases of major inputs. Section 773(f)(3) of the Act (formerly section 773(e)(3)) provides that where the Department has reasonable grounds to believe or suspect that an affiliated supplier has made below-cost sales of a major production input, the Department may base the value of the input on the affiliated supplier's production costs. This provision applies both to cost of production and constructed value.

A number of commentators suggested that the Department clarify through regulation the following standards for initiating an input dumping investigation: (1) That no supplier cost information may be requested by the Department without ''reasonable grounds'' to suspect input dumping; (2) that no carryover of ''reasonable grounds'' exists between segments of a proceeding (*i.e.*, findings of below-cost inputs in one segment does not provide grounds for automatic initiation in the next); (3) the time limits within which the Department must make a determination as to which affiliated party inputs are ''major''; and (4) that no supplier cost information may be requested if the supplier's transfer prices are demonstrated to be at arm's length. Other commentators suggested that the Department define a ''major input'' as any material, labor, or overhead input that represents five percent or more of the total cost of materials for the merchandise. In addition, these commentators urged the Department to consider on a case-by-case basis the use of transfer prices or costs in valuing major inputs. The commentators stressed that this determination must be made separately for each input rather than in the aggregate for all affiliated party inputs.

The determination of whether an affiliated party input constitutes a ''major input'' in a particular case depends on the input and the product under investigation. It would be inappropriate for the Department to attempt to establish an all-encompassing threshold for defining the term ''major input,'' because such a definition likely would prove to be too broad in some circumstances and too narrow in others. However, the Department does agree that it should attempt to identify, as early as possible in a proceeding, a standard for identifying major inputs that is appropriate to the product and industry in question. In addition, as the Department gains more experience in determining whether parties are ''affiliated'' under the new law, the

Department will establish through practice the evidentiary threshold for requesting transfer prices and cost data from affiliated suppliers that furnish major inputs (see section 351.102 and the accompanying explanation for further discussion regarding affiliated persons).

Calculation of Costs: One commentator stated that it is unclear from the SAA when costs are ''rapidly changing'' such that it would be appropriate to use shorter time periods to calculate costs. The commentator suggested that the Department's regulations provide illustrative examples that would allow interested parties to determine when costs are ''rapidly changing.'' According to the commentator, the Department's regulations also should describe the shorter periods that would be used to compute costs in such situations.

Another commentator recommended that the Department clarify in its regulations the circumstances in which it will calculate costs based on amounts incurred by both the exporter and producer. The commentator urged the Department to refrain from attempting to correct ''upstream dumping,'' and instead limit its analysis of both the exporter's and the producer's costs to those situations in which the relationship between the two throws into question the legitimacy of their transactions.

The Department believes that determinations involving both of these issues are fact-specific in nature, and that while regulatory examples might give some guidance, they also might be construed as imposing limits on the circumstances in which the Department will address these issues. As a result, the Department has not included any provisions in the regulations specifically addressing these issues. The Department intends to develop its practice with respect to these issues over time.

With respect to the use of a respondent's normal records in computing COP and CV, two commentators suggested that the regulations incorporate the concepts outlined in the SAA, at 834–35, including the stipulation that the Department will use the records of the exporter or producer of the merchandise, provided that such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting or producing country and reasonably reflect the costs associated with the production and sale of the merchandise. The commentators also recommended additional regulations describing the type of evidence the Department will consider in determining whether respondent's costs are ''reasonably reflected,'' and stating that the Department will re-allocate costs that would inappropriately reduce COP and CV. In response to these suggestions, one commentator argued that the SAA does not provide the Department with the authority to adjust a respondent's books and records in order to compute a ''more accurate'' per-unit cost. Rather, the Department is to use company records as the basis for reporting costs, so long as those records are kept in accordance with GAAP and reasonably reflect costs incurred.

Section 773(f) of the Act explicitly provides for the use of a company's books and record in the calculation of costs, provided that such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. As a result, the Department has not repeated this directive in the regulations. The determination of whether a respondent's costs are ''reasonably reflected'' will be based on a case- and fact-specific analysis. Where a respondent's records do not reasonably reflect the costs associated with the production and sale of the merchandise, the Department may adjust the figures in a respondent's books and records in order to compute a more accurate per-unit cost.

With respect to the Department's COP questionnaire, one commentator suggested that the questionnaire be revised to elicit sufficient information that traces the cost of production from the per unit cost of the subject merchandise back to a company's audited financial statements. The Department must balance its ability to conduct COP investigations with reporting burdens placed on respondents, and the Department this year revised its questionnaire with this balance in mind. Notably, the questionnaire does require respondents to provide reconciliation of unit costs. If, however, the information requirements of the Department's standard antidumping questionnaire should prove inadequate in a particular case, the Department will modify its information requirements.

Section 351.408

The current statutory provision addressing the calculation of normal value in antidumping proceedings involving nonmarket economies (''NMEs'') was enacted as part of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, section 1316(a)). The Department never issued regulations implementing the 1988 amendment. Instead, the Department developed its NME methodology through administrative practice. Now, with the benefit of seven years' experience in administering the NME provision, the Department believes it is appropriate to codify the rules the Department intends to apply. Certain of these rules, contained in § 351.408, restate the practice the Department has developed over the past seven years, while other rules constitute changes that the Department believes to be improvements over current practice.

We have decided not to codify the existing MOI (market oriented industry) test at this time. Some commentators have argued that it does not make sense to use an NME producer's prices or costs in an environment in which institutions important to the functioning of markets such as private ownership and private capital markets do not exist. In their view, an NME producer's prices or costs can only have economic meaning where these very fundamental types of institutions are in place. Other commentators see the current MOI test as overlooking the important role that an open trading system, with relatively few quantitative restraints, can play in ensuring that domestic prices and costs are market-determined, and in reducing the effects of remaining instances of state presence or control. In light of these concerns, we are seeking comments on whether the current MOI test succeeds in identifying situations where it would be appropriate to use domestic prices or cost in an NME as the basis for normal value and, if not, what form the test should take.

Surrogate Selection: Section 773(c)(1) of the Act contains the usual methodology for calculating normal value in proceedings involving NMEs, the so-called ''factors of production'' methodology. Section 773(c)(2) provides an alternative to the preferred methodology, allowing the Department in narrowly drawn circumstances to use the export prices of certain market economies as normal value. In either case, the Department is required to select a ''surrogate'' market economy country or countries to use in its calculations.

Section 773(c)(4) of the Act describes the criteria for surrogate selection where the factors of production methodology is used: surrogates should be market economies at a level of economic development comparable to that of the NME and significant producers of comparable merchandise. Where the export price alternative to the factors of production methodology is being used,

prices are to be taken from market economy countries at levels of economic development comparable to that of the NME. This alternative, as to which further comment is appropriate, has not been used in any antidumping proceeding since the 1988 amendment was enacted, but if it is used in future cases, the economic comparability criterion, discussed in more detail below, would be applied in the same way it is applied when the factors of production methodology is used.

In selecting surrogate countries for investigations and reviews that were conducted under the 1988 amendment and that involved the valuation of NME producers' factors of production, the Department has accorded differing weights to the economic comparability and significant producer criteria. Typically, the Department has placed greater emphasis on the former. However, the regulations do not codify this weighing scheme, because, depending on the specific facts of a case, this scheme can result in a poor surrogate selection. For example, where the production process for the merchandise being investigated relies heavily on non-traded inputs (*i.e.*, inputs that must be acquired locally, such as electricity), it is reasonable to expect that significant production of that merchandise will occur only in countries where the input is relatively inexpensive. However, these countries may not be economically comparable to the NME. For example, the Department has not observed any correlation between electricity prices and levels of economic development. The Department believes that in adopting the significant producer criterion, Congress intended for the Department to select a surrogate country (or countries) where input prices and availability allow significant production to occur. Therefore, where production of the subject merchandise relies heavily on an input that is more readily available, or available at lower cost, in certain countries, it is appropriate to place greater weight on the ''significant producer'' criterion.

On the other hand, where the most important inputs are easily traded and can be obtained from multiple sources in the surrogate country, the significant producer criterion may be less important. This is because in these situations there is no direct correspondence between significant levels of production and input price or availability. Instead, wage rates and other considerations such as investment restrictions or access to important markets will be more important determinants of where production will occur. With the exception of wage rates, which are discussed further below, these other considerations will not usually have as direct an impact on the input prices that would be used to value the NME producers' factors of production.

For these reasons, the Department does not believe it is appropriate to create an a priori weighing scheme to be applied to the criteria for selecting surrogates. Instead, in each proceeding the Department will identify those countries that are economically comparable to the NME and those countries that are significant producers of comparable merchandise. If there is a country that meets both criteria, that country will be selected as the surrogate. If there is more than one country that meets both criteria, the Department will evaluate the specific facts developed in the course of the proceeding to determine whether to select the more economically comparable country or the country whose producers employ production technologies similar to those of the NME producers. If no country meets both the economic comparability and the significant producer criteria, the Department will examine the facts of the case and comments submitted by the parties to determine which criterion should receive the greatest weight.

Economic Comparability: Regarding the economic comparability criterion, the Department's practice of relying most heavily on comparability of per capita GDP to select economically comparable countries is codified in paragraph (b). Certain other indicia of economic comparability have been considered in the past, such as growth rates and the distribution of labor between the manufacturing, agricultural and service sectors. However, primary weight has been placed on per capita GDP.

Factor Valuation: Once a surrogate country (or countries) has been selected, the next step is to assign values to the actual factors or inputs used by the NME producer. In choosing these values, the Department has developed practices that emphasize ''accuracy, fairness, and predictability.'' Oscillating Fans and Ceiling Fans from the People's Republic of China, 56 FR 55271, 55275 (October 25, 1991), cited with approval in *Lasko Metal Products, Inc.* v. *United States*, 43 F.3d 1442 (Fed. Cir. 1994). The Department continues to believe that these goals should guide the factor valuation process, and, consequently, is proposing rules to further this.

Two important practices have arisen to promote the accuracy, fairness and predictability of the factor valuation process. First, the Department has developed a preference for using publicly available, published information (''PAPI'') to derive factor prices. See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-weld Pipe Fittings from the People's Republic of China, 57 FR 21058, 21062 (May 18, 1992) (Butt-Weld Pipe Fittings). This practice, along with the practice of attempting to use data derived from a single surrogate country, clearly enhances the transparency and predictability of our determinations. However, based on experience, the Department has concluded that a preference for PAPI also can result in decreased accuracy. This is particularly true where surrogate country trade statistics are used and the import/export categories used to derive unit values are broad.

In order to strike a better balance between the goals of accuracy and transparency, paragraph (c)(1) drops the preference for published information, limiting the preference to publicly available information. The public availability standard is aimed at promoting transparency, while the deletion of the published information standard enables the Department to achieve greater accuracy when information on the specific factor can be derived outside of published sources. Paragraph (c)(1) is not meant to preclude the Department from using published information. Instead, it is intended to reflect the Department's preference for input specific data over the aggregated data that frequently appear in published statistics.

The Department continues to take the position that it is not required to use ''perfectly conforming information'' for factor valuations. Ceiling Fans from the People's Republic of China: Notice of Court Decision; Exclusion from the Application of the Antidumping Duty Order, in Part; and Amended Final determination and Order, 59 F.R. 9956 (March 2, 1994). However, the Department is exploring means of enhancing the accuracy of the data used to value the NME producers' raw materials. To that end, the Department intends to use the flexibility accorded to the agency by section 773(c) and reflected in court decisions to date regarding our administration of the 1988 amendment.

The second important practice that has developed involves situations where an NME producer uses inputs which are: (1) Imported from a market economy producer, and (2) paid for in a market economy currency. In these instances, the Department has used the price actually paid by the NME

producer in lieu of a price in the surrogate country. This practice has been upheld by the Federal Circuit in *Lasko*. Paragraph(c)(1) clarifies the Department's authority to continue this practice.

The regulation also clarifies two aspects of this practice. First, in situations where a portion of the NME producer's input is sourced from a market economy source (and paid for in a market economy currency) and the remainder is sourced from producers within the NME, paragraph (c)(1) makes clear that the price paid to the market economy supplier should normally be used to value the input, not the price derived from a surrogate. This reflects the Department's position that accuracy is enhanced when the NME producer's actual costs can be used. However, where the amount purchased from a market economy supplier is insignificant, that price may be disregarded.

Second, in using prices of inputs imported from market economy suppliers, the Department in the past has stated that the imported input must be paid for in a convertible currency. The Department believes that this is an overly rigorous requirement. The extent to which currencies may be converted varies even among market economy currencies. Yet, the Department uses the exchange rates for less-than-fully convertible currencies in our dumping proceedings involving those countries. Paragraph (c)(1) recognizes that full convertibility of the currency used to pay for the imported input is not necessary so long as the market economy producer is paid in a market economy currency.

Valuation in Single Country: Paragraph (c)(2) codifies the Department's general preference for valuing all factors, except labor (as discussed below), in a single surrogate country. As noted above, to enhance the predictability of proceedings involving nonmarket economies, the Department has followed the practice of attempting to value the NME producers' factors of production in a single country, even though sections 773(c)(1) and (c)(4) clearly permit values to be developed from more than one country.

Where the Department is able to develop industry specific data on manufacturing overhead, general expenses, and profit, it is particularly appropriate to remain within a single country for those values. Normally, it is inappropriate to combine the manufacturing overhead rate from producers in one surrogate with the general expenses of producers in another surrogate, and the profit of producers in yet another surrogate. Therefore, particularly for manufacturing overhead, general expenses and profit, the Department prefers to use a single surrogate.

With regard to other inputs, however, the preference for using a single country addresses, at least in part, a different concern. It is meant to prevent parties from ''margin shopping''; i.e., to prevent parties from arguing that the Department combine input prices from different surrogates to achieve the highest or lowest valuations of those inputs. While it is important to discourage margin shopping, the Department also has encountered situations in which the accuracy of available information regarding prices for particular factors in the surrogate country is highly questionable. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China, 59 FR 55625, 55630 (November 8, 1994). Clearly, in these situations it is appropriate to reject the questionable values and use data from a second country. Alternatively, where the factor is traded internationally, the goals of accuracy and fairness may be better served by using the prices observed in international markets to represent the price at which producers in the surrogate country could obtain the input.

Labor: Paragraph (c)(3) proposes a new methodology with respect to the valuation of labor. Practitioners and academicians commenting on the application of the antidumping law to NMEs (and, in particular, the use of economically comparable countries as surrogates) have tended to equate comparable per capita GDPs with comparable wages. The Department has examined this proposition based on recent data of the type the Department uses in its proceedings, and has concluded that while per capita GDP and wages are positively correlated, there is great variation in the wage rates of the market economy countries that the Department typically treats as being economically comparable. As a practical matter, this means that the result of an NME case can vary widely depending on which of the economically comparable countries is selected as the surrogate.

Because of the variability of wage rates in countries with similar per capita GDPs, paragraph (c)(3) directs the Department to use what is essentially an average of the wage rates in market economy countries viewed as being economically comparable to the NME. The statute permits this approach because section 773(c)(4) refers to using prices or costs in ''one or more market economy countries.'' Moreover, use of this average wage rate will contribute to both the fairness and the predictability of NME proceedings. By avoiding the variability in results depending on which economically comparable country happens to be selected as the surrogate, the results are much fairer to all parties. To enhance predictability, the average wage to be applied in any NME proceeding will be calculated by the Department each year, based on the most recently available data, and will be available to any interested party. This method of computing the wage rate should reduce the workload on the Department and the parties, because it eliminates the need to develop specific wage rate information for each case.

Specifically, the Department will calculate the wage rate to be applied by using an ordinary least squares regression relating the wage rates and per capita GDP of approximately 45 market economy countries. The data used and the results of the regression will be available from the Department upon request.

Manufacturing Overhead, General Expenses, and Profit: Paragraph (c)(4) deals with the valuation of manufacturing overhead, general expenses, and profit. These elements tend to be significant components of the constructed normal value of NME exports, and, hence, it is particularly important to have accurate values for them. However, the Department's experience in this regard has been less than satisfactory. Frequently, under prior law, the Department could not find surrogate values for these elements, thus forcing the Department to rely upon the statutory minima of 10 and 8 percent for general expenses and profit, respectively. The amendments to section 773(e)(2)(A) have eliminated this as an option. Moreover, even in cases in which PAPI was available, it was virtually always highly aggregated and frequently it was not clear what types of expenses were included in the amounts.

Given the importance of manufacturing overhead, general expenses and profit in the calculation of normal value, the Department believes it is important to seek information that is as accurate as possible. To this end, paragraph (c)(4) expresses a preference for using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country for valuing manufacturing overhead, general expenses and profit. Because the Department expects that these elements will vary widely across industries, we

will attempt to obtain data that is as specific as possible to the subject merchandise.

In past cases, the Department has relied on U.S. embassies in surrogate countries to obtain data on manufacturing overhead, general expenses, and profit (as well as values for other inputs) with disappointing results (see *Butt-Weld Pipe Fittings,* supra). The Department intends to redouble its efforts to work with embassies in gathering this data, while at the same time seeking alternative means of developing this information. However, even if the Department is able to develop industry-specific information, it would be overly optimistic to believe that the Department will have detailed information on the exact expenses that have gone into the values for manufacturing overhead and general expenses. As far as overhead is concerned, this can raise problems of double counting. For example, if we do not know whether water or electricity is included in the surrogate producers' overhead, we will not know whether to value those factors separately, in addition to the overhead. The Department continues to believe that these situations must be approached on a case-by-case basis using facts available, in accordance with section 773(c)(1).

Assignment of Antidumping Margins: The Department has addressed the rates to be applied in NME cases in connection with the definition of ''rates'' contained in § 351.102.

Section 351.409

Section 351.409 sets forth the guidelines for making adjustments to normal value for differences in quantities, and is based on section 353.55 of the existing regulations. The statutory authorization for quantity adjustments is found in section 773(a)(6)(C)(i) of the Act. The proposed rule is substantially the same as the existing rule, with three exceptions discussed below.

Paragraph (b) is changed from existing section 353.55(b). The existing paragraph provides that the Department will deduct a quantity discount from the selling price of merchandise used in the antidumping calculation, regardless of whether the quantity discount was actually applied, only in two circumstances. To qualify for the adjustment, a respondent either had to have granted discounts of a similar magnitude on 20 percent of the foreign market sales, or the respondent had to demonstrate that savings were specifically attributable to production of different quantities. One commentator suggested that the Department should have more flexibility to grant the adjustment, because there may be other ways to demonstrate that different price levels exist for different quantities. The Department agrees that this may be so, and, accordingly, paragraph (b) provides that an adjustment for differences in quantities ''normally'' will be made only if the ''20 percent'' or ''production savings'' rules, noted above, are satisfied.

The same commentator also suggested that the absence of a published price list should not be controlling with respect to the allowance of an adjustment. While the Department does not necessarily agree that the absence of a price list is controlling under existing § 353.55, paragraph (d) clarifies that the existence or absence of a price list is not controlling. In addition, the Department has clarified that where a price list does exist, the Department, in determining whether or not to grant an adjustment, will give weight to the price list only to the extent that the producer or exporter in question has adhered to the price list.

Paragraph (e) is new, and deals with the relationship between adjustments for differences in quantities and adjustments for differences in levels of trade. Under the new statute and these proposed rules, the Department may grant claims for level of trade adjustments more frequently than it did in the past. In many instances, however, there is likely to be a correlation between the level of trade at which a sale occurs and the volume sold. Therefore, there is a real possibility that in adjusting for differences in level of trade, the Department also will be adjusting, in whole or in part, for differences in quantities. In order to conform to the prohibition in § 351.401(b) against the double-counting of adjustments, paragraph (e) provides that where the Department makes a level of trade adjustment, the Department will not make an adjustment for differences in quantities unless the effect on price comparability of quantity differences can be isolated from the effect of the level of trade difference.

Section 351.410

Section 351.410 clarifies aspects of the Department's practice with respect to adjustments for differences in circumstances of sale under section 773(a)(6)(C)(iii) of the Act and the SAA, at 828. In general, the Department's practice with respect to adjustments for direct selling expenses and assumptions of expenses remains unchanged from prior practice. However, paragraph (a) confirms that the expenses for which the Department will make a circumstance of sale adjustment include, in constructed export price situations, direct expenses and ''assumptions'' incurred in the foreign market on sales of the subject merchandise, that are not deducted under section 772(d) of the Act. The reference to a deduction for other selling expenses relates to the commission offset contained in paragraph (e), discussed below.

One commentator suggested that section 351.410 be drafted in such a way as to essentially function as a catch-all provision to achieve ''fairness.'' While section 773(a) of the Act and Article 2.4 of the Antidumping Agreement both require that a fair comparison be made, both provisions specify in detail the methods by which this requirement is satisfied. Therefore, the Department has not adopted this suggestion.

Paragraph (b) defines ''direct selling expenses.'' The provision broadly defines such expenses in the same way that they are defined in the statute for purposes of the deduction from constructed export price under section 772(d)(1)(B) of the Act. In addition, paragraph (b) provides a non-exhaustive list of expenses that frequently qualify as direct selling expenses. In this regard, this list includes commissions, a type of expense which often was treated as a direct selling expense under prior Department practice. In section 772(d)(1) of the Act, commissions are listed separately from direct selling expenses. This might suggest that, for purposes of adjustments to normal value, commissions should not be treated as direct selling expenses. However, the SAA, at 828, indicates that Congress intended that, with the exception of the so-called ''ESP offset,'' the Department's practice regarding circumstance of sale adjustments would remain unchanged. Accordingly, for purposes of adjustments to normal value, the Department has included commissions in the list of commonly encountered direct selling expenses.

Some commentators suggested that the Department should recognize expenses as direct in the home or third country market when they are reported in accordance with business records normally kept by the firm based on the GAAP of the appropriate country. The Department has not adopted this suggestion. As noted above, a direct selling expense must result from, and bear a direct relationship to, the particular sale in question. The fact that, for example, salespersons' salaries are reported to the Department in a manner consistent with foreign GAAP and the

particular firm's normal business records does not transform what is unquestionably a fixed expense into an expense that ''results from'' a sale.

Other commentators suggested that direct selling expenses should be defined as expenses incurred after a sale. The Department has not adopted this suggestion. ''After'' and ''results from'' do not necessarily mean the same thing. While direct selling expenses typically are ''post-sale'' expenses, the Department has chosen to adhere to the language of the statute and the SAA.

Assumed expenses, which are treated like direct expenses, are defined in paragraph (c). Although such expenses were not previously identified as a separate category of expenses, it has long been the Department's policy to treat such expenses in the same manner as direct expenses.

Paragraph (d) is largely unchanged from prior regulations, and provides that the normal basis for circumstance of sale adjustments will be the amount of the expense. However, if appropriate, the Department may rely on differences in value to make the adjustment.

Paragraph (e), based on existing § 353.56(b)(1), continues the special rule to be applied when commissions are deducted in one market, but there are no commissions in the other market. Under the special rule, other selling expenses may be deducted from the price in the market without commissions up to the amount of the commission.

The Department also received several suggestions relating to the treatment of particular types of adjustments, such as discounts and rebates and adjustments for differences in credit terms. Discounts and rebates are dealt with in § 351.401(c). Without commenting on the merits of the particular suggestions with regard to selling expenses, the Department has declined to promulgate regulations on these particular topics, because they go beyond the level of methodological detail that the Department is attempting to achieve in these regulations.

Section 351.411

Section 351.411 establishes the provisions for making adjustments for differences in physical characteristics. As under current practice, the Department is not authorized to make adjustments for physical characteristics when products are considered to be identical.

Section 351.412

Section 351.412 deals with levels of trade, adjustments for differences in levels of trade, and the CEP offset. Paragraph (b) establishes how the Department will identify levels of trade in calculating export price, CEP, and normal value. Paragraph (b)(1) clarifies that, for export price and normal value, the level of trade will be based on the price of the sale before any adjustment is made. For constructed export price, the level of trade will be based on the price after adjustments are made under § 772(d) of the Act, but prior to any other adjustment. The purpose of this provision is to establish the level of trade of the constructed export price sale at the level at which the sale would have been made, had it been an export price sale.

With respect to the identification of levels of trade, some commentators argued that, consistent with past practice, the Department should base level of trade on the starting price for both export price (''EP'') and CEP sales. In support of this argument, these commentators cite the portion of the SAA (discussed above) that states that the introduction of the new terms ''EP'' and ''CEP'' was not intended to change prior Department practice. In addition, these commentators argued that the deduction of U.S. expenses and profit does not change the level of trade of the CEP.

The Department believes (as did other commentators) that this position is not supported by the SAA, and that it is neither reasonable nor logical. If the starting price is used for all U.S. sales, the Department's ability to make meaningful comparisons at the same level of trade (or appropriate adjustments for differences in levels of trade) would be severely undermined in cases involving CEP sales. As noted by other commentators, using the starting price to determine the level of trade of both types of U.S. sales would result in a finding of different levels of trade for an EP sale and a CEP sale adjusted to a price that reflected the same selling functions. Accordingly, the regulations specify that the level of trade analyzed for EP sales is that of the starting price, and for CEP sales it is the constructed level of trade of the price after the deduction of U.S. selling expenses and profit.

Section 351.412(c)(1) explains the general rule that the Department will make an adjustment for differences in levels of trade when it (i) calculates normal value based on sales at a level of trade different from that of the export price or constructed export price, and (ii) determines that the difference in level of trade has an effect on price comparability. We are interested in comments on how these rules can provide further guidance on this adjustment. We also will take account in the final rules the knowledge we expect to gain in administrative proceedings under the new law.

Certain commentators argued that there should be a regulatory presumption that the level of trade of the EP or CEP sale is the least remote level. Under these circumstances, they argue, a level of trade adjustment could never increase normal value. Therefore, the Department would only be required to analyze respondents' claims for level of trade adjustments. In the absence of a claim for an adjustment, the level of trade of the U.S. sale and normal value would be considered the same.

We disagree that the EP or CEP necessarily will be the least remote level of trade. Therefore, the regulations specify that the Department will in all instances analyze the level of trade of the sales in the United States and the comparison market, and, where appropriate, will increase or decrease normal value to effect a fair comparison.

Paragraph (c)(2) sets forth the rules for determining whether there are different levels of trade. This determination will be based primarily on the selling functions performed at each of the allegedly different levels. As set forth in the SAA, at 830, overlap between functions is not necessarily determinative of whether two levels of trade are distinct. Paragraph (c)(2) makes clear that sales at two allegedly different levels will be considered to have been made at the same level where the selling functions at the two levels are substantially the same.

Several commentators argued that the existence of a level of trade must be established by criteria independent of seller functions. This argument holds that only after establishing the existence of discrete levels of trade should the Department consider differences in selling functions and the pattern of price differences. Furthermore, they contend, levels of trade are properly identified by the classification of the seller's customers in the chain of distribution. Specifically, to be considered at different levels of trade, two sellers must sell to different customer categories in a chain of distribution (e.g., producer, distributor, retailer, consumer). For example, a producer and distributor both selling to end users would be classified at the same level of trade.

Other commentators, on the other hand, stated that there is no mention of an additional test or criterion in either the Act or the SAA. These commentators also note that both the Act and the SAA stress activities of the seller and do not mention activities of the customer as a factor in the level of

trade analysis. Furthermore, according to these commentators, it is quite common, even usual, for firms operating at different levels of trade to sell to the same customer categories and sometimes to the same customers. For example, producers sell to large retailers as well as to distributors that in turn sell to smaller retailers. However, the fact that they both sell to retailers does not justify classifying producers and distributors as being at the same level of trade. Each sells a different mix of product and service.

The Department agrees that an additional test or criterion for level of trade is not required by the AD Agreement or the statute, nor is one justified. Although the language of section 773(a)(7)(A) of the Act might be interpreted to mean that the recognition of a level of trade is dependent on factors in addition to seller functions, the Department interprets the reference to level of trade as referring to a respondent's claimed or alleged level of trade. The only test identified in the statute for the legitimacy of the claimed levels of trade is the activity of the seller. The suggestion that customer classifications define levels of trade does not comport with that test and, furthermore, the Department believes that the effect of adopting such a criterion would be to curtail severely the possibility of adjusting for significant differences in seller functions, either with a level of trade adjustment or the CEP offset. Nevertheless, the Department does recognize that prices within a single level of trade, defined by seller function, can be affected by the class of customer, and the Department will make every effort to compare sales at the same level of trade and to the same class of customer.

Paragraph (c)(2) defines level of trade solely on the basis of seller functions. However, small differences in the functions of the seller will not alter the level of trade. The latter point is important, because certain commentators argued that the difference in just one selling function should be sufficient to justify a difference in level of trade. While it is conceivable that the Department may find in a particular case that some single function is so significant as to change the level of trade, this would be relatively rare. Furthermore, the adoption of the suggested standard would result in the submission, and possibly the grant, of unreasonable claims for level of trade adjustments.

Paragraph (c)(3) reflects the requirements of the statute for identifying effects on price comparability. One commentator recommended requiring that at least 90 percent of the sales of the foreign like product reflect differences in price at different levels of trade to qualify for an adjustment. The regulations do not include a specific test for a pattern of consistent price differences, because, at this time, the Department has no experience in applying this standard.

Under paragraph (c)(4), the amount of any adjustment will be measured by calculating the average percentage difference between weighted-average prices at the two different levels, and applying this percentage to the price to be adjusted. To avoid double-counting adjustments, the regulation stipulates that price differences will be measured after making price adjustments required under other provisions, such as adjustments for movement and selling expenses under section 773(a)(6) of the Act. One commentator recommended limiting the adjustment to the difference between the lowest price at the more advanced level of trade and the highest price at the less advanced level of trade. The Department does not agree that this would be appropriate, because it would reflect price extremes rather than usual prices. Another commentator recommended that the regulations specifically exclude from the measurement of a level of trade adjustment related party prices that fail the arm's-length test and all sales deemed outside the ordinary course of trade. The Department has not included such regulations, because we have little experience in this area and will need time to develop the appropriate methodology. To attempt to further circumscribe this adjustment by regulation could have unintended consequences that would be difficult to correct in an actual case.

Paragraph (d) elaborates on the constructed export price offset contained in section 773(a)(7)(B) by providing a definition of the indirect expenses that make up this offset.

One commentator suggested that the regulations specify that in CEP calculations there is a presumption that there will be a level of trade adjustment or the offset. The Department has not included such a regulation. It would not be appropriate to assume that the CEP is at a different level of trade than the prices used as the basis of normal value or that any such differences in level of trade affect price comparability.

Section 351.413

Section 351.413, describing the authority to disregard insignificant adjustments, is unchanged from section 353.59(a) of the Department's prior regulations.

Section 351.414

Section 351.414 implements section 777A(d) of the Act, and deals with the three methods authorized by the statute for determining whether sales at less than fair value exist. Paragraph (b) is a definitional section which coins shorthand expressions for the three methods in order to render the remainder of § 353.414 less cumbersome.

Methodological Preferences: The methodological preferences set forth in the SAA are codified in paragraph (c). Consistent with the SAA, at 842–43, paragraph (c)(1) provides that the preferred method in an antidumping investigation will be the average-to-average method, and that the preferred method in an antidumping review will be the average-to-transaction method.

In the case of reviews, there were numerous comments regarding the use of the average-to-average method. The Department has not adopted the suggestion of one commentator that the regulations provide that the average-to-average method is the preferred method in a review. Although section 777A(d)(2) of the Act does not expressly state that the average-to-transaction method is the preferred method in a review, the SAA expressly states that it is the ''preferred methodology.''

Conversely, the Department has not adopted the suggestion of several commentators that the regulations preclude use of the average-to-average method in a review. Although the average-to-transaction method is clearly the preferred method in a review, neither the statute nor the SAA affect the Department's preexisting authority under section 777A(a) of the Act to use the average-to-average method in reviews under the appropriate circumstances. In this regard, several commentators urged that the Department adopt a regulation expressly acknowledging that the average-to-average method may be used in reviews. The regulations do not include such a provision, because the Department believes that the statute and these regulations are sufficiently clear regarding the propriety of using the average-to-average method in reviews.

Several commentators argued that the average-to-average method should be used whenever normal value is based on constructed value. As with any comparisons, the preferences of the statute and these regulations apply. In investigations, the preferred method, including comparisons with constructed

value, is average to average. In reviews, it is average to transaction.

We also have not adopted a suggestion that the regulations provide that in cases involving highly perishable agricultural products, the preferred approach will be to use the average-to-average method, with averages being calculated over the market cycle. In the past, the Department has used the average-to-average method in cases involving perishable agricultural products, and believes that the administrative and judicial precedents arising out of these cases would continue to be valid under the new statute and these regulations. See e.g., *Floral Trade Council of Davis, Cal.* v. *United States,* 606 F. Supp. 695, 703 (CIT 1991). However, at this time, the Department does not believe it has sufficient experience with these types of cases to warrant the creation of a regulatory preference in favor of the average-to-average method in all cases of this type. Likewise, the Department does not consider it appropriate to create a regulatory preference for averaging over the market cycle. At this point, the Department believes it is more appropriate to decide these issues on a case-by-case basis.

Paragraph (c)(1) also makes clear that the transaction-to-transaction method will only be used in unusual circumstances, as urged by several commentators. In addition, one commentator stated that a regulation should provide details regarding the Department's application of this method. The Department does not believe it appropriate at this time to go beyond what is already included in the SAA; namely, that this method ''would be appropriate in situations where there are very few sales and the merchandise sold in each market is identical or very similar or is custom-made.'' SAA, at 842.

Application of the Average-to-Average Method: Paragraph (d) deals with the application of the average-to-average method. Paragraph (d)(1) provides that the Secretary will identify those sales to the United States that are comparable to each other and include such sales in an ''averaging group.'' The Secretary then will compare the weighted average of the export prices or constructed export prices of the sales included within a particular averaging group to the weighted average of the normal values of such sales.

Paragraph (d)(2) deals with the identification of the averaging group. In this regard, several commentators suggested that the regulations provide for the use of various percentage benchmarks or rules of thumb in identifying averaging groups. Paragraph (d)(2) does not adopt these suggestions.

The SAA, at 842, provides the following guidance on this subject:

> To ensure that these averages are meaningful, Commerce will calculate averages for comparable sales of subject merchandise to the U.S. and sales of foreign like products. In determining the comparability of sales for purposes of inclusion in a particular average, Commerce will consider factors it deems appropriate, such as the physical characteristics of the merchandise, the region of the country in which the merchandise is sold, the time period, and the class of customer involved. For example, in the case of 13″ and 21″ televisions, average normal values would be calculated for each size of television, not a single average for sales of both sizes of televisions.

Although the SAA describes the factors that the Department will consider in identifying an averaging group, it does not prescribe exactly how these factors should be applied.

On the other hand, the Department appreciates the need for guidance concerning the application of what is, for practical purposes, a new method of determining sales at less than fair value. Thus, paragraph (d)(2) provides that in identifying an averaging group, the Secretary will rely primarily on comparability in physical characteristics of the merchandise and the level of trade at which the sales to the United States occur. These two factors are the easiest to identify, are the most likely to have an effect on sales comparability, and the Department has used them in the past for purposes of identifying comparison transactions. The Secretary also will consider, but give less weight to, the region of the United States in which the merchandise is sold, the class of customer involved, and such other factors as the Secretary considers relevant. While it is not possible to reduce the identification of averaging groups to a precise formula with respect to these two factors, the Department's general approach will be to look for clear dividing lines among the sales, and to ignore minor differences between sales.

With respect to the factor of physical characteristics, the views of the commentators were widely divergent. Some commentators appeared to suggest that all merchandise falling within a ''such or similar group,'' as that term has been used in Department practice, should be regarded as comparable and, thus, included in the same averaging group. Other commentators essentially suggested that averaging groups be identified on a model-specific basis or on the basis of control numbers (''CONNUMS''), a term used in the Department's computer programs to identify the specific merchandise sold in each market. Still others have suggested that the Department determine comparability by applying its ''20 percent difmer'' guideline, a guideline used in the past for determining whether the foreign like product is such or similar to the U.S. product.

Paragraph (d)(2) limits the averaging group to ''subject merchandise identical or virtually identical in all physical characteristics.'' Thus, the Department has adopted the model specific or control number approach recommended by some commentators for selecting the physical characteristics appropriate for inclusion within the same averaging group. This is necessary and appropriate given the instruction of section 777A(d)(1) that we compare, ''the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) of comparable merchandise.''

The SAA identifies time as a factor affecting the comparability of sales. Paragraph (d)(3) deals with this factor by prescribing the time period over which weighted averages will be calculated. Paragraph (d)(3) provides that the Secretary ''normally'' will calculate weighted averages for the entire period of investigation or review, but that shorter periods may be used where the normal values, export prices, or constructed export prices for sales included within an averaging group differ significantly over the course of the period of investigation or review. Where values or prices are significantly different over time, it is fair to assume that time has affected sales comparability.

On this issue, too, the comments reflected widely divergent views. Some commentators argued that averaging always be done over the entire period of investigation or review. Others suggested that the averaging period not exceed one month. Still others suggested a ''normal'' rule of one year or six months, with shorter periods in cases involving industries where prices change more quickly. The approach of paragraph (d)(3) is along the lines of the latter suggestion.

Application of the Average-to-Transaction Method: Paragraph (e) deals with the application of the average-to-transaction method. Consistent with the SAA, at 843, paragraph (e)(1) provides that where normal value is based on price, the Department will limit its averaging of such prices to sales incurred during the ''contemporaneous month.'' Paragraph (e)(2), in turn, defines ''contemporaneous month.'' In

response to a suggestion made by several commentators, paragraph (e)(2) essentially codifies the Department's longstanding ''90/60'' day rule.

Targeted Dumping: Paragraph (f) deals with the so-called ''targeted dumping'' provision in section 777A(d)(1)(B) of the Act. Notwithstanding the general preference for the use of the average-to-average method in an antidumping investigation, the average-to-transaction method may be used where targeted dumping exists. Paragraph (f)(1) sets forth the standard to be applied in identifying targeted dumping, and, with one exception, tracks the language of the statute. The exception is that the Department has incorporated the suggestion made by several commentators, including both domestic and respondent interests, that the Department employ standard statistical techniques, in identifying targeted dumping.

Some commentators advocated that the regulations clarify the statutory provision in various ways, such as through the use of ''bright line'' standards for identifying targeted dumping. Other commentators opposed the adoption of bright line standards. In general, the Department has not attempted to elaborate on the language of section 777A(d)(1)(B), given its lack of experience with this provision. More specifically, the Department has eschewed the adoption of bright line standards for the time being. First, the SAA, at 843, states that the Department ''will proceed on a case-by-case basis, because small differences may be significant for one industry or one type of product, but not for another.'' A bright line test would be inconsistent with this case-by-case approach. Second, the commentators differed widely with respect to where the ''bright line'' should be drawn, and, given our lack of experience with this provision, the Department has no basis for selecting a bright line on its own. While it may be possible in the future to establish bright line rules-of-thumb as rebuttable presumptions, at this point it would be premature to do so.

Some commentators suggested a regulation stating that the targeted dumping provision will be narrowly construed, while other commentators argued for a liberal construction. Because the statute and its legislative history do not support either construction, the Department has not adopted either of these suggestions.

In addition to the comments described above, the Department received numerous comments that, while falling short of bright line standards, nonetheless went in the direction of establishing per se rules. These comments included:

- If the prices of the preponderance of sales alleged to be part of the targeted dumping are within the range of prices of the non-target sales, then targeted dumping is not taking place.
- Price variations due to seasonal demand should not be deemed to constitute targeted dumping.
- Any trend within the subset of alleged targeted dumped sales must be substantially uniform among the subset of sales.
- Mere differences in price over time will rarely, if ever, be sufficient to constitute targeted dumping.
- Targeted dumping automatically exists whenever there are significant individual sales made at prices substantially below a firm's prevailing price.

Most of these comments raise factors that the Department legitimately should consider in conducting an analysis of targeted dumping in an actual antidumping investigation. In particular, the Department recognizes that the statute requires that there be a ''pattern'' of sales at significantly different prices. We do not believe that targeted dumping exists where the price differences are simply random or spurious price fluctuations. In our view, targeting means that, within the industry under consideration, the price differences suggest a meaningful pattern. However, for the same reason that the Department is unwilling to adopt bright line standards at this time, the Department is unwilling to adopt *per se* rules or even rebuttable presumptions. Several commentators advocated a regulation which would state that targeted dumping does not exist if the same pattern of sales exists in both the U.S. and the comparison market. We have not adopted this suggestion for these proposed rules. We are interested, however, in receiving comments from parties on the factors to be considered in deciding whether the average-to-average methodology takes account of patterns of significantly different export prices.

One commentator stated that the regulations should state that a targeted dumping analysis will be done on a respondent- and model-specific basis. With respect to a respondent-specific analysis, we think it is self-evident that a targeted dumping analysis would be respondent-specific. Thus, we see no need for a regulation on this point. With respect to a model-specific analysis, while we would expect that a targeted dumping analysis normally would consider whether sales of particular models constitute targeted dumping, we are reluctant at this time to go beyond the language of the statute, because other modes of analysis also might be appropriate.

Paragraph (f)(2) deals with the sales to which the average-to-transaction method is applied when targeted dumping is found, a question which neither the statute nor the SAA expressly addresses. Paragraph (f)(2) provides that ''normally'' the average-to-transaction method will be limited to those sales determined to constitute targeted dumping. The average-to-average method would be applied to the remaining sales.

At least one commentator suggested that if targeted dumping is found with respect to a particular firm, the average-to-transaction method should be used with respect to all of that firm's sales. The Department has not adopted this suggestion, because in many instances such an approach would be unreasonable and unduly punitive. For example, if targeted dumping accounted for only 1 percent of a firm's total sales, there would not appear to be any basis for applying the average-to-transaction method to those sales accounting for the remaining 99 percent.

At the other extreme, some commentators suggested that the average-to-transaction method always should be limited to those sales that constitute targeted dumping. The Department has not adopted this suggestion either, because there may be situations in which targeted dumping by a firm is so pervasive that the average-to-transaction method becomes the best benchmark for gauging the fairness of that firm's pricing practices.

Paragraph (f)(3) deals with allegations of targeted dumping. Many commentators suggested that the Department should only analyze targeted dumping if the petitioner satisfies a minimum evidentiary threshold. The Department agrees that those interested parties familiar with the market for the subject merchandise are in the best position to direct the Department's attention toward possible targeted dumping. Thus, it will examine whether targeted dumping is occurring only after receipt of a sufficient allegation that such targeting is taking place, and that the average-to-average or, when appropriate, transaction-to-transaction methods cannot adequately deal with the alleged targeting. The requirement of an allegation should not pose a significant burden on a domestic interested party, because the allegation can be based on information that is readily available in the record of the proceeding.

Paragraph (g) deals with requests for information. The first sentence of paragraph (g) provides that the Secretary will request information relevant to the identification of averaging groups and to the analysis of targeted dumping. The Department does not agree with the implication in the commentators' statements that it should not collect detailed, transaction-specific information in the absence of an allegation. First, the SAA, at 843, specifically provides that the Department will collect such transaction-specific information. Second, the information is necessary to permit the interested parties to reach reasonable judgements regarding the possibility that there is targeted dumping. In this regard, the Department is concerned that the prohibition against the release under APO of business proprietary customer names in investigations not serve as a bar to possible allegations. The Department will make every effort to ensure that public summaries provide the parties with adequate information.

The second sentence of paragraph (g) provides that if a response to a request for information relevant to the identification of averaging groups and targeted dumping is such as to warrant the application of the facts otherwise available, the Secretary may apply the average-to-transaction method to all of the particular respondent's sales. This approach was suggested by one commentator, although a different commentator argued that there was no need for a special ''facts available'' rule for price averaging. While it may be true that, as a legal matter, the general ''facts available'' provisions of the statute and these regulations are sufficiently broad to authorize the use of the average-to-transaction method in the types of situation under discussion, the Department believes that it would be useful to clarify in advance the possible consequences of failing to provide adequate and timely responses to requests for transaction-specific information.

One commentator suggested that if the Department employs the targeted dumping exception, it should present its explanation for using the exception in its preliminary determination so that all parties have an opportunity to comment on the issue. The Department agrees with the basic proposition that all parties should have ample opportunity to comment on all issues in an antidumping proceeding. However, the Department does not consider it advisable to promulgate a regulation which would prohibit the application of the targeted dumping exception in a final determination if that exception had not been applied in the preliminary determination. Among other things, it would render petitioners' right to comment on the issue meaningless in cases where the Department did not invoke the exception in a preliminary determination. In general, the Department anticipates that issues relating to price averaging and targeted dumping will be among the first to be raised by the parties to an antidumping investigation, and that parties will have ample opportunity to submit comments.

Section 351.415

Section 351.415 implements section 777A of the Act, which provides for the selection of the exchange rate used to convert foreign currencies to U.S. dollars. The Department's past practice, as specified in § 353.60 of the prior regulations, was to convert normal value at the exchange rate used by the U.S. Customs Service to convert foreign currencies for duty assessment purposes.

Paragraph (a) requires the Department to convert foreign currencies at the exchange rate in effect on the date of the U.S. sale, subject to certain exceptions. First, as reflected in paragraph (b), if the U.S. sale is tied directly to a forward exchange contract, the Department will convert normal value at the forward rate. In accordance with the SAA, at 842, group sales of currency on forward markets will be allowed, provided that the exchange transaction can be linked to the export sale. Second, as reflected in paragraph (c), fluctuations in the daily exchange rates are to be ignored and, third, as reflected in paragraph (d), respondents in an investigation must be granted at least 60 days to adjust prices after a sustained movement in the exchange rate.

The statute does not provide guidance on how to recognize a sustained movement or fluctuation. The SAA, at 841, provides that the Department is to adopt regulations to implement section 777A. We have not expanded on the statute in these proposed regulations because the provisions concerning daily rates, fluctuations and sustained movements are new, and we have had little practical experience. We believe, therefore, that it is preferable to implement the new requirements through an exchange rate model announced in a policy bulletin, which will afford us the ability to adjust practice based on experience.

We plan to use the model for one year and then evaluate its performance based on public comment. We then will alter the model as necessary, and expand the regulations to provide more extensive guidance.

The Department has designed the model with three goals in mind:

1. To implement the requirements of the statute in as simple a manner as possible;
2. To ensure that all exporters, whether or not under order, can estimate the daily exchange rate that the Department will employ in an antidumping analysis at the time they set their U.S. prices; and
3. To capture the model in simple computer code to reduce the administrative burden on the Department and parties wishing to monitor exchange rates.

As required by the statute, the model has been designed to convert a file of actual daily exchange rates to a file of ''official'' daily exchange rates, which will be used to convert normal value to U.S. dollars. In this process, the Department will classify each actual daily exchange rate as normal or ''fluctuating.'' An extended pattern of fluctuating rates will define a ''sustained movement.'' Based on these classifications, the model will assign the appropriate exchange rate for each day. This model is not suitable for use with hyper-inflating currencies. In these cases, we intend to use the daily rate absent compelling evidence that a fluctuation or sustained movement in the currency's value has occurred.

We will prepare the file of official daily exchange rates by processing the daily rate for all 32 currencies collected and certified by the New York Federal Reserve Bank. We intend to create files of official rates on a monthly basis and to post these files on the Internet to facilitate wide access to the rates. We also will continue our practice of providing rates on diskette for a small fee. In addition, we will make the model's computer code widely available to any party wishing to create the file of official rates.

Subpart F—Subsidy Determinations Regarding Cheese Subject to an In-Quota Rate of Duty

Subpart F of Part 351 deals with subsidy determinations regarding cheese subject to an in-quota rate of duty pursuant to section 702(a) of the Trade Agreements Act of 1979. Once known as the ''quota cheese provision,'' the URAA amended section 702(a) and related provisions to conform to the WTO Agreement on Agriculture. In particular, the URAA eliminated the requirement that the President impose quantitative restrictions on cheese where price-undercutting conditions exist, because such restrictions would be inconsistent with Article 4.2 of the Agreement on Agriculture. However, the United States retains the right to impose

fees on within-quota quantities where the price-undercutting conditions of section 702 exist. See SAA, page 729.

Because the URAA did not significantly change the Department's role under section 702, Subpart F is largely identical to existing Part 355, Subpart D. The principal changes are the elimination of material that merely repeats the statute and the substitution of the term ''cheese subject to an in-quota rate of duty'' for the term ''quota cheese.''

Classification

E.O. 12866

This proposed rule has been determined to be significant under E.O. 12866.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if promulgated as final, would not have a significant economic impact on a substantial number of small entities. The Department does not believe that there will be any substantive effect on the outcome of antidumping and countervailing duty proceedings as a result of the streamlining and simplification of their administration. With respect to the substantive amendments implementing the Uruguay Round Agreements Act, the Department believes that these regulations benefit both petitioners and respondents without favoring either, and, therefore, would not have a significant economic effects. As such, an initial regulatory flexibility analysis was not prepared.

Paperwork Reduction Act

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 proposed rule does not contain any new reporting or recording requirements subject to the Paperwork Reduction Act. The collections of information contained in this rule are currently approved by the Office of Management and Budget under OMB Control Numbers 0625–0105, 0625–0148, and 0625–0200. The public reporting burdens for these collections of information are estimated to average 40 hours for the antidumping and countervailing duty petition requirements, and 15 hours for the initiation of downstream product monitoring. These estimates include 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 these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, D.C. 20503.

E.O. 12612

This proposed rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects

19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Investigations, Reporting and recordkeeping requirments.

19 CFR Part 353

Administrative practice and procedure, Antidumping, Business and industry, Confidential business information, Investigations, Reporting and recordkeeping requirements.

19 CFR Part 355

Administrative practice and procedure, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of Information, Investigations, Reporting and recordkeeping requirements.

Dated: February 15, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

For the reasons stated, it is proposed to amend 19 CFR chapter III as follows:

PARTS 353 AND 355 [REMOVED]

1. Parts 353 and 355 are removed.

2. A new Part 351 is added to read as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

Subpart A—Scope and Definitions

Sec.

351.101 Scope.
351.102 Definitions.
351.103 Central Records Unit.
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Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note, 1303 note, 1671 et seq., and 3538.

PART 351—COUNTERVAILING AND ANTIDUMPING DUTIES

Subpart A—Scope and Definitions

§ 351.101 Scope.

(a) *In general.* This part contains procedures and rules applicable to antidumping and countervailing duty proceedings under Title VII of the Act (19 U.S.C. 1671 *et seq.*), and also determinations regarding cheese subject to an in-quota rate of duty under section 702 of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note). This part reflects statutory amendments made by titles I, II, and IV of the Uruguay Round Agreements Act, Public Law 103–465, which, in turn, implement into United States law the provisions of the following agreements annexed to the Agreement Establishing the World Trade Organization: Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994; Agreement on Subsidies and Countervailing Measures; and Agreement on Agriculture.

(b) *Countervailing duty investigations involving imports not entitled to a material injury determination.* Under section 701(c) of the Act, certain provisions of the Act do not apply to countervailing duty proceedings involving imports from a country that is not a Subsidies Agreement country and is not entitled to a material injury determination by the Commission. Accordingly, certain provisions of this Part referring to the Commission may not apply to such proceedings.

(c) *Application to governmental importations.* To the extent authorized by section 771(20) of the Act, merchandise imported by, or for the use of, a department or agency of the United States Government is subject to the imposition of countervailing duties or antidumping duties under this part.

§ 351.102 Definitions.

(a) *Introduction.* The Act contains many technical terms applicable to antidumping and countervailing duty proceedings. This section:

(1) Defines terms that appear in the Act but are not defined in the Act;

(2) Defines terms that appear in this Part but do not appear in the Act; and

(3) Elaborates on the meaning of certain terms that are defined in the Act.

In the case of terms that are not defined in this section or other sections of this Part, readers should refer to the relevant provisions of the Act.

(b) *Definitions.*

Act. ''Act'' means the Tariff Act of 1930, as amended.

Administrative review. ''Administrative review'' means a review under section 751(a)(1) of the Act.

Affiliated persons; affiliated parties. ''Affiliated persons'' and ''affiliated parties'' have the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others:

(1) Corporate or family groupings;

(2) Franchise or joint venture agreements;

(3) Debt financing; and

(4) Close supplier relationships.

Aggregate basis. ''Aggregate basis'' means the calculation of a country-wide subsidy rate based solely on information provided by the foreign government.

Anniversary month. ''Anniversary month'' means the calendar month in which the anniversary of the date of publication of an order or suspension of investigation occurs.

APO. ''APO'' means an administrative protective order described in section 777(c)(1) of the Act.

Applicant. ''Applicant'' means a representative of an interested party that has applied for access to business proprietary information under an APO.

Article 4/Article 7 Review. ''Article 4/Article 7 review'' means a review under section 751(g)(2) of the Act.

Article 8 violation review. ''Article 8 violation review'' means a review under section 751(g)(1) of the Act.

Authorized applicant. ''Authorized applicant'' means an applicant that the Secretary has authorized to receive business proprietary information under an APO under section 777(c)(1) of the Act.

Changed circumstances review. ''Changed circumstances review'' means a review under section 751(b) of the Act.

Customs Service. ''Customs Service'' means the United States Customs Service of the United States Department of the Treasury.

Department. ''Department'' means the United States Department of Commerce.

Domestic interested party. ''Domestic interested party'' means an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) of the Act.

Expedited antidumping review. ''Expedited antidumping review'' means a review under section 736(c) of the Act.

Factual information. ''Factual information'' means:

(1) Initial and supplemental questionnaire responses;

(2) Data or statements of fact in support of allegations;

(3) Other data or statements of facts; and

(4) Documentary evidence.

Fair value. ''Fair value'' is a term used during an antidumping investigation, and is an estimate of normal value.

Importer. ''Importer'' means the person by whom, or for whose account, subject merchandise is imported.

Investigation. Under the Act and this Part, there is a distinction between an antidumping or countervailing duty investigation and a proceeding. An ''investigation'' is that segment of a proceeding that begins on the date of publication of notice of initiation of investigation and ends on the date of publication of the earliest of:

(1) Notice of termination of investigation,

(2) Notice of rescission of investigation,

(3) Notice of a negative determination that has the effect of terminating the proceeding, or

(4) An order.

New shipper review. ''New shipper review'' means a review under section 751(a)(2) of the Act.

Order. An ''order'' is an order issued by the Secretary under section 303, section 706, or section 736 of the Act or a finding under the Antidumping Act, 1921.

Ordinary course of trade. ''Ordinary course of trade'' has the same meaning as in section 771(15) of the Act. The Secretary may consider sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are extraordinary for the market in question (such as sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications), merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price.

Party to the proceeding. ''Party to the proceeding'' means any interested party that actively participates, through written submissions of factual information or written argument, in a segment of a proceeding. Participation in a prior segment of a proceeding will not confer on any interested party ''party to the proceeding'' status in a subsequent segment.

Person. ''Person'' includes any interested party as well as any other individual, enterprise, or entity, as appropriate.

Proceeding. A ''proceeding'' begins on the date of the filing of a petition under section 702(b) or section 732(b) of the Act or the publication of a notice of initiation in a self-initiated investigation under section 702(a) or section 732(a) of the Act, and ends on the date of publication of the earliest notice of:

(1) Dismissal of petition,

(2) Rescission of initiation,

(3) Termination of investigation,

(4) A negative determination that has the effect of terminating the proceeding,

(5) Revocation of an order, or

(6) Termination of a suspended investigation.

Rates. ''Rates'' means the individual weighted-average dumping margins, the individual countervailable subsidy rates, the country-wide subsidy rate, or the all-others rate, as applicable. In an antidumping proceeding involving imports from a nonmarket economy country, ''rates'' may consist of a single dumping margin applicable to all exporters and producers.

Respondent interested party. ''Respondent interested party'' means an interested party described in subparagraph (A) or (B) of section 771(9) of the Act.

Sale; likely sale. A ''sale'' includes a contract to sell and a lease that is equivalent to a sale. A ''likely sale'' means a person's irrevocable offer to sell.

Secretary. ''Secretary'' means the Secretary of Commerce or a designee. The Secretary has delegated to the Assistant Secretary for Import Administration the authority to make determinations under Title VII of the Act and this Part.

Section 753 review. ''Section 753 review'' means a review under section 753 of the Act.

Section 762 review. ''Section 762 review'' means a review under section 762 of the Act.

Segment of proceeding.

(1) *In general.* An antidumping or countervailing duty proceeding consists of one or more segments. ''Segment of a proceeding'' or ''segment of the proceeding'' refers to a portion of the proceeding that is reviewable under section 516A of the Act.

(2) *Examples.* An antidumping or countervailing duty investigation or a review of an order or suspended investigation each would constitute a segment of a proceeding.

Sunset review. ''Sunset review'' means a review under section 751(c) of the Act.

Third country. For purposes of subpart D, ''third country'' means a country other than the exporting country and the United States. Under section 773(a) of the Act and subpart D, in certain circumstances the Secretary may determine normal value on the basis of sales to a third country.

URAA. ''URAA'' means the Uruguay Round Agreements Act.

§ 351.103 Central Records Unit.

(a) *In general.* Import Administration's Central Records Unit is located at Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. The office hours of the Central Records Unit are between 8:30 a.m. and 5:00 p.m. on business days. Among other things, the Central Records Unit is responsible for maintaining an official and public record for each antidumping and countervailing duty proceeding (see § 351.104), the Subsidies Library (see section 775(2) and section 777(a)(1) of the Act), and the service list for each proceeding (see paragraph (c) of this section).

(b) *Filing of documents with the Department.* While persons are free to provide Department officials with courtesy copies of documents, no document will be considered as having been received by the Secretary unless it is submitted to the Central Records Unit and is stamped by the Central Records Unit with the date and time of receipt.

(c) *Service list.* The Central Records Unit will maintain and make available a service list for each segment of a proceeding. Each interested party that asks to be included on the service list for a segment of a proceeding must designate a person to receive service of documents filed in that segment. The service list for an application for a scope ruling is described in § 351.225(n).

§ 351.104 Record of proceedings.

(a) *Official record.* (1) *In general.* The Secretary will maintain in the Central Records Unit an official record of each antidumping and countervailing duty proceeding. The Secretary will include in the official record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of a proceeding that pertains to the proceeding. The official record will include government memoranda pertaining to the proceeding, memoranda of ex parte meetings, determinations, notices published in the Federal Register, and transcripts of hearings. The official record will contain material that is public, business proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each segment of the proceeding.

(2) *Material returned.*

(i) The Secretary, in making any determination under this part, will not use factual information, written argument, or other material that the Secretary returns to the submitter.

(ii) The official record will include a copy of a returned document, solely for purposes of establishing and documenting the basis for returning the

document to the submitter, if the document was returned because:

(A) the document, although otherwise timely, contains untimely filed new factual information (see § 351.301(b));

(B) the submitter made a nonconforming request for business proprietary treatment of factual information (see § 351.304);

(C) the Secretary denied a request for business proprietary treatment of factual information (see § 351.304);

(D) the submitter is unwilling to permit the disclosure of business proprietary information under APO (see § 351.304).

(iii) In no case will the official record include any document that the Secretary returns to the submitter as untimely filed, or any unsolicited questionnaire response unless the response is a voluntary response accepted under § 351.204(d) (see § 351.302(d)).

(b) *Public record.* The Secretary will maintain in the Central Records Unit a public record of each proceeding. The record will consist of all material contained in the official record (see paragraph (a) of this section) that the Secretary decides is public information under § 351.105(b), government memoranda or portions of memoranda that the Secretary decides may be disclosed to the general public, and public versions of all determinations, notices, and transcripts. The public record will be available to the public for inspection and copying in the Central Records Unit (see § 351.103). The Secretary will charge an appropriate fee for providing copies of documents.

(c) *Protection of records.* Unless ordered by the Secretary or required by law, no record or portion of a record will be removed from the Department.

§ 351.105. Public, business proprietary, privileged, and classified information.

(a) *Introduction.* There are four categories of information in an antidumping or countervailing duty proceeding: public, business proprietary, privileged, and classified. In general, public information is information that may be made available to the public, whereas business proprietary information may be disclosed (if at all) only to authorized applicants under an APO. Privileged and classified information may not be disclosed at all, even under an APO. This section describes the four categories of information.

(b) *Public information.* The Secretary normally will consider the following to be public information:

(1) Factual information of a type that has been published or otherwise made available to the public by the person submitting it;

(2) Factual information that is not designated as business proprietary by the person submitting it;

(3) Factual information which, although designated as business proprietary by the person submitting it, is in a form which cannot be associated with or otherwise used to identify activities of a particular person or which the Secretary determines is not properly designated as business proprietary;

(4) Publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations; and

(5) Written argument relating to the proceeding that is not designated as business proprietary.

(c) *Business proprietary information.* The Secretary normally will consider the following factual information to be business proprietary information, if so designated by the submitter:

(1) Business or trade secrets concerning the nature of a product or production process;

(2) Production costs (but not the identity of the production components unless a particular component is a trade secret);

(3) Distribution costs (but not channels of distribution);

(4) Terms of sale (but not terms of sale offered to the public);

(5) Prices of individual sales, likely sales, or other offers (but not components of prices, such as transportation, if based on published schedules, dates of sale, product descriptions (other than business or trade secrets described in paragraph (c)(1) of this section), or order numbers);

(6) Names of particular customers, distributors, or suppliers (but not destination of sale or designation of type of customer, distributor, or supplier, unless the destination or designation would reveal the name);

(7) In an antidumping proceeding, the exact amount of the dumping margin on individual sales;

(8) In a countervailing duty proceeding, the exact amount of the benefit applied for or received by a person from each of the programs under investigation or review (but not descriptions of the operations of the programs, or the amount if included in official public statements or documents or publications, or the ad valorem countervailable subsidy rate calculated for each person under a program);

(9) The names of particular persons from whom business proprietary information was obtained;

(10) The position of a domestic producer or workers regarding a petition; and

(11) Any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

(d) *Privileged information.* The Secretary will consider information privileged if, based on principles of law concerning privileged information, the Secretary decides that the information should not be released to the public or to parties to the proceeding. Privileged information is exempt from disclosure to the public or to representatives of interested parties.

(e) *Classified information.* Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982 (47 FR 14874 and 15557, 3 CFR 1982 Comp. p. 166), or successor executive order, if applicable. Classified information is exempt from disclosure to the public or to representatives of interested parties.

§ 351.106 De minimis net countervailable subsidies and weighted-average dumping margins disregarded.

(a) *Introduction.* Prior to the enactment of the URAA, the Department had a well-established and judicially sanctioned practice of disregarding net countervailable subsidies or weighted-average dumping margins that were de minimis. The URAA codified in the Act the particular de minimis standards to be used in antidumping and countervailing duty investigations. This section discussed the application of the de minimis standards in antidumping or countervailing duty proceedings.

(b) *Investigations.* (1) *In general.* In making a preliminary or final antidumping or countervailing duty determination in an investigation (see sections 703(b), 733(b), 705(a), and 735(a) of the Act), the Secretary will apply the de minimis standard set forth in section 703(b)(4) or section 733(b)(3) of the Act (whichever is applicable).

(2) *Transition rule.* (i) If:

(A) The Secretary resumes an investigation that has been suspended (see section 704(i)(1)(B) or section 734(i)(1)(B) of the Act); and

(B) the investigation was initiated before January 1, 1995, then

(ii) The Secretary will apply the de minimis standard in effect at the time that the investigation was initiated.

(c) *Reviews and other determinations.* (1) *In general.* In making any determination other than a preliminary or final antidumping or countervailing duty determination in an investigation (see paragraph (b) of this section), the

Secretary will treat as de minimis any weighted-average dumping margin or countervailable subsidy rate that is less than 0.5% ad valorem, or the equivalent specific rate.

(2) *Assessment of antidumping duties.* The Secretary will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the relevant period of review made by any person for which the Secretary calculates an assessment rate under § 351.212(b)(1) that is less than 0.5 percent ad valorem, or the equivalent specific rate.

Subpart B—Antidumping and Countervailing Duty Procedures

§ 351.201 Self-initiation.

(a) *Introduction.* Antidumping and countervailing duty investigations may be initiated as the result of a petition filed by a domestic interested party or at the Secretary's own initiative. This section contains rules regarding the actions the Secretary will take when the Secretary self-initiates an investigation.

(b) *In general.* When the Secretary self-initiates an investigation under section 702(a) or section 732(a) of the Act, the Secretary will publish in the Federal Register notice of ''Initiation of Antidumping (Countervailing Duty) Investigation.'' In addition, the Secretary will notify the Commission at the time of initiation of the investigation, and will make available to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determination.

(c) *Persistent dumping monitoring.* To the extent practicable, the Secretary will expedite any antidumping investigation initiated as the result of a monitoring program established under section 732(a)(2) of the Act.

§ 351.202 Petition requirements.

(a) *Introduction.* The Secretary normally initiates antidumping and countervailing duty investigations based on petitions filed by a domestic interested party. This section contains rules concerning the contents of a petition, filing requirements, notification of foreign governments, pre-initiation communications with the Secretary, and assistance to small businesses in preparing petitions.

(b) *Contents of petition.* A petition requesting the imposition of antidumping or countervailing duties must contain the following, to the extent reasonably available to the petitioner:

(1) The name and address of the petitioner and any person the petitioner represents;

(2) The identity of the industry on behalf of which the petitioner is filing, including the names and addresses of all other known persons in the industry;

(3) Information relating to the degree of industry support for the petition, including:

(i) the total volume and value of U.S. production of the domestic like product, and

(ii) the volume and value of the domestic like product produced by the petitioner and each domestic producer identified;

(4) A statement indicating whether the petitioner has filed for relief from imports of the subject merchandise under section 337 of the Act (19 U.S.C. 1337, 1671a), sections 201 or 301 of the Trade Act of 1974 (19 U.S.C. 2251 or 2411), or section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862);

(5) A detailed description of the subject merchandise that defines the requested scope of the investigation, including the technical characteristics and uses of the merchandise and its current U.S. tariff classification number;

(6) The name of the country in which the subject merchandise is manufactured or produced and, if the merchandise is imported from a country other than the country of manufacture or production, the name of any intermediate country from which the merchandise is imported;

(7)(i) In the case of an antidumping proceeding:

(A) The names and addresses of each person the petitioner believes sells the subject merchandise at less than fair value and the proportion of total exports to the United States that each person accounted for during the most recent 12-month period (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the exports);

(B) All factual information (particularly documentary evidence) relevant to the calculation of the export price and the constructed export price of the subject merchandise and the normal value of the foreign like product (if unable to furnish information on foreign sales or costs, provide information on production costs in the United States, adjusted to reflect production costs in the country of production of the subject merchandise);

(C) If the merchandise is from a country that the Secretary has found to be a nonmarket economy country, factual information relevant to the calculation of normal value, using a method described in § 351.408; or

(ii) In the case of a countervailing duty proceeding:

(A) The names and addresses of each person the petitioner believes benefits from a countervailable subsidy and exports the subject merchandise to the United States and the proportion of total exports to the United States that each person accounted for during the most recent 12-month period (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the exports);

(B) The alleged countervailable subsidy and factual information (particularly documentary evidence) relevant to the alleged countervailable subsidy, including any law, regulation, or decree under which it is provided, the manner in which it is paid, and the value of the subsidy to exporters or producers of the subject merchandise;

(C) If the petitioner alleges an upstream subsidy under section 771A of the Act, factual information regarding:

(*1*) Countervailable subsidies, other than an export subsidy, that an authority of the affected country provides to the upstream supplier;

(*2*) The competitive benefit the countervailable subsidies bestow on the subject merchandise; and

(*3*) The significant effect the countervailable subsidies have on the cost of producing the subject merchandise;

(8) The volume and value of the subject merchandise imported during the most recent two-year period and any other recent period that the petitioner believes to be more representative or, if the subject merchandise was not imported during the two-year period, information as to the likelihood of its sale for importation;

(9) The name and address of each person the petitioner believes imports or, if there were no importations, is likely to import the subject merchandise;

(10) Factual information regarding material injury, threat of material injury, or material retardation, and causation;

(11) If the petitioner alleges ''critical circumstances'' under section 703(e)(1) or section 733(e)(1) of the Act and § 351.206, factual information regarding:

(i) Whether imports of the subject merchandise are likely to undermine seriously the remedial effect of any order issued under section 706(a) or section 736(a) of the Act;

(ii) Massive imports of the subject merchandise in a relatively short period; and

(iii) (A) In an antidumping proceeding, either

(*1*) A history of dumping; or

(*2*) The importer's knowledge that the exporter was selling the subject merchandise at less than its fair value, and that there would be material injury by reason of such sales; or

(B) In a countervailing duty proceeding, whether the countervailable subsidy is inconsistent with the Subsidies Agreement; and

(12) Any other factual information on which the petitioner relies.

(c) *Simultaneous filing and certification.* The petitioner must file a copy of the petition with the Commission and the Secretary on the same day and so certify in submitting the petition to the Secretary. Factual information in the petition must be certified, as provided in § 351.303(g).

(d) *Business proprietary status of information.* The Secretary will treat as business proprietary any factual information for which the petitioner requests business proprietary treatment and which meets the requirements of § 351.304.

(e) *Amendment of petition.* The Secretary may allow timely amendment of the petition. The petitioner must file an amendment with the Commission and the Secretary on the same day and so certify in submitting the amendment to the Secretary. If the amendment consists of new allegations, the timeliness of the new allegations will be governed by § 351.301.

(f) *Notification of representative of the exporting country.* Upon receipt of a petition, the Secretary will deliver a public version of the petition (see § 351.304(c)) to a representative in Washington, DC, of the government of any exporting country named in the petition.

(g) *Petition based upon derogation of an international undertaking on official export credits.* In the case of a petition described in section 702(b)(3) of the Act, the petitioner must file a copy of the petition with the Secretary of the Treasury, as well as with the Secretary and the Commission, and must so certify in submitting the petition to the Secretary.

(h) *Assistance to small businesses; additional information.*

(1) The Secretary will provide technical assistance to eligible small businesses, as defined in section 339 of the Act, to enable them to prepare and file petitions. The Secretary may deny assistance if the Secretary concludes that the petition, if filed, could not satisfy the requirements of section 702(c)(1)(A) or section 732(c)(1)(A) of the Act (whichever is applicable) (see § 351.203).

(2) For additional information concerning petitions, contact the Deputy Assistant Secretary for Investigations, Import Administration, International Trade Administration, Room 3099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; (202) 482–5497.

(i) *Pre-initiation communications.* (1) *In general.* During the period before the Secretary's decision whether to initiate an investigation, communications with the Department will be governed by section 702(b)(4)(B) or section 732(b)(3)(B) of the Act (whichever is applicable). The Secretary will not consider the filing of a notice of appearance to constitute a communication.

(2) *Consultations with foreign governments in countervailing duty proceedings.* In a countervailing duty proceeding, the Secretary will invite the government of any exporting country named in the petition for consultations with respect to the petition.

(The information collection requirements in paragraph (a) of this section have been approved by the Office of Management and Budget under control number 0625–0105.)

§ 351.203 Determination of sufficiency of petition.

(a) *Introduction.* When a petition is filed under § 351.202, the Secretary must determine that the petition satisfies the relevant statutory requirements before initiating an antidumping or countervailing duty investigation. This section sets forth rules regarding a determination as to the sufficiency of a petition (including the determination that a petition is supported by the domestic industry), the deadline for making the determination, and the actions to be taken once the Secretary has made the determination.

(b) *Determination of sufficiency.* (1) *In general.* Normally, not later than 20 days after a petition is filed, the Secretary, on the basis of sources readily available to the Secretary, will examine the accuracy and adequacy of the evidence provided in the petition and determine whether to initiate an investigation under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act (whichever is applicable).

(2) *Extension where polling required.* If the Secretary is required to poll or otherwise determine support for the petition under section 702(c)(4)(D) or section 732(c)(4)(D) of the Act, the Secretary may, in exceptional circumstances, extend the 20-day period by the amount of time necessary to collect and analyze the required information. In no case will the period between the filing of a petition and the determination whether to initiate an investigation exceed 40 days.

(c) *Notice of initiation and distribution of petition.* (1) *Notice of initiation.* If the initiation determination of the Secretary under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act is affirmative, the Secretary will initiate an investigation and publish in the Federal Register notice of ''Initiation of Antidumping (Countervailing Duty) Investigation.'' The Secretary will notify the Commission at the time of initiation of the investigation and will make available to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

(2) *Distribution of petition.* As soon as practicable after initiation of an investigation, the Secretary will provide a public version of the petition to all known exporters (including producers who sell for export to the United States) of the subject merchandise. If the Secretary determines that there is a particularly large number of exporters involved, instead of providing the public version to all known exporters, the Secretary may provide the public version to a trade association of the exporters or, alternatively, may consider the requirement of the preceding sentence to have been satisfied by the delivery of a public version of the petition to the government of the exporting country under § 351.202(f).

(d) *Insufficiency of petition.* If an initiation determination of the Secretary under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act is negative, the Secretary will dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and publish in the Federal Register notice of ''Dismissal of Antidumping (Countervailing Duty) Petition.''

(e) *Determination of industry support.* In determining industry support for a petition under section 702(c)(4) or section 732(c)(4) of the Act, the following rules will apply:

(1) *Measuring production.* The Secretary normally will measure production over a twelve-month period specified by the Secretary, and may measure production based on either value or volume. Where a party to the proceeding establishes that production data for the relevant period, as specified by the Secretary, is unavailable, production levels may be established by

reference to alternative data that the Secretary determines to be indicative of production levels.

(2) *Positions treated as business proprietary information.* Upon request, the Secretary may treat the position of a domestic producer or workers regarding the petition and any production information supplied by the producer or workers as business proprietary information under § 351.105(b)(10).

(3) *Positions expressed by workers.* The Secretary will consider the positions of workers and management regarding the petition to be of equal weight. The Secretary will assign a single weight to the positions of both workers and management according to the production of the domestic like product of the firm in which the workers and management are employed. If the management of a firm expresses a position in direct opposition to the position of the workers in that firm, the Secretary will treat the production of that firm as representing neither support for, nor opposition to, the petition.

(4) *Certain positions disregarded.* (i) The Secretary will disregard the position of a domestic producer that opposes the petition if such producer is related to a foreign producer or to a foreign exporter under section 771(4)(B)(ii) of the Act, unless such domestic producer demonstrates to the Secretary's satisfaction that its interests as a domestic producer would be adversely affected by the imposition of an antidumping order or a countervailing duty order, as the case may be; and

(ii) The Secretary may disregard the position of a domestic producer that is an importer of the subject merchandise, or that is related to such an importer, under section 771(4)(B)(ii) of the Act.

(5) *Special rule for regional industries.* Under section 702(c)(4)(C) or section 732(c)(4)(C) of the Act, the applicable region will be the region specified in the petition.

(6) *Polling the industry.* In conducting a poll of the industry under section 702(c)(4)(D)(i) or section 732(c)(4)(D)(i) of the Act, the Secretary will include unions, groups of workers, and trade or business associations described in paragraphs (9)(D) and (9)(E) of section 771 of the Act.

(f) *Time limits where petition involves same merchandise as that covered by an order that has been revoked.* Under section 702(c)(1)(C) or section 732(c)(1)(C) of the Act, and in expediting an investigation involving subject merchandise for which a prior order was revoked or a suspended investigation was terminated, the Secretary will consider ''section 751(d)'' as including a predecessor provision.

§ 351.204 Transactions and persons examined; voluntary respondents; exclusions.

(a) *Introduction.* Because the Act does not specify the precise period of time that the Secretary should examine in an antidumping or countervailing duty investigation, this section sets forth rules regarding the period of investigation (''POI''). In addition, this section includes rules regarding the selection of persons to be examined, the treatment of voluntary respondents that are not selected for individual examination, and the exclusion of persons that the Secretary ultimately finds are not dumping or are not receiving countervailable subsidies.

(b) *Period of investigation.* (1) *Antidumping investigation.* In an antidumping investigation, the Secretary normally will examine merchandise sold during the four most recently completed fiscal quarters (or, in an investigation involving merchandise imported from a nonmarket economy country, the two most recently completed fiscal quarters) as of the month preceding the month in which the petition was filed or in which the Secretary self-initiated an investigation. However, the Secretary may examine merchandise sold during any additional or alternate period that the Secretary concludes is appropriate.

(2) *Countervailing duty investigation.* In a countervailing duty investigation, the Secretary normally will rely on information pertaining to the most recently completed fiscal year for the government and exporters or producers in question. If the government and the exporters or producers have different fiscal years, the Secretary normally will rely on information pertaining to the most recently completed calendar year. If the investigation is conducted on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary normally will rely on information pertaining to the most recently completed fiscal year for the government in question. However, the Secretary may rely on information for any additional or alternate period that the Secretary concludes is appropriate.

(c) *Exporters and producers examined.* (1) *In general.* In an investigation, the Secretary will attempt to determine an individual weighted-average dumping margin or individual countervailable subsidy rate for each known exporter or producer of the subject merchandise. However, the Secretary may decline to examine a particular exporter or producer if that exporter or producer and the petitioner agree.

(2) *Limited investigation.* Notwithstanding paragraph (c)(1) of this section, the Secretary may limit the investigation by using a method described in subsection (a), (c), or (e) of section 777A of the Act.

(d) *Voluntary respondents.* (1) *In general.* If the Secretary limits the number of exporters or producers to be individually examined under section 777A(c)(2) or section 777A(e)(2)(A) of the Act, the Secretary will examine voluntary respondents (exporters or producers, other than those selected for individual examination) in accordance with section 782(a) of the Act.

(2) *Acceptance of voluntary respondents.* After receiving a voluntary response filed in accordance with section 782(a) of the Act, the Secretary will determine, as soon as practicable, whether to examine the voluntary respondent individually. A voluntary respondent accepted for individual examination will be subject to the same requirements as an exporter or producer initially selected by the Secretary for individual examination, including, where applicable, the use of the facts available under section 776 of the Act and § 351.308.

(3) *Exclusion of voluntary respondents' rates from all-others rate.* In calculating an all-others rate under section 705(c)(5) or section 735(c)(5) of the Act, the Secretary will exclude weighted-average dumping margins or countervailable subsidy rates calculated for voluntary respondents.

(e) *Exclusions.* (1) *In general.* The Secretary will exclude from an affirmative final determination under section 705(a) or section 735(a) of the Act or an order under section 706(a) or section 736(a) of the Act, any exporter or producer for which the Secretary determines an individual weighted-average dumping margin or individual net countervailable subsidy rate of zero or de minimis.

(2) *Preliminary determinations.* In an affirmative preliminary determination under section 703(b) or section 733(b) of the Act, an exporter or producer for which the Secretary preliminarily determines an individual weighted-average dumping margin or individual net countervailable subsidy of zero or de minimis will not be excluded from the preliminary determination or the investigation. However, the exporter or producer will not be subject to provisional measures under section 703(d) or section 733(d) of the Act.

(3) *Countervailing duty investigations conducted on an aggregate basis and requests for exclusion from*

countervailing duty order. Where the Secretary conducts a countervailing duty investigation on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary will consider and investigate requests for exclusion to the extent practicable. An exporter or producer that desires exclusion from an order must submit:

(i) A certification by the exporter or producer that it received zero or de minimis net countervailable subsidies during the period of investigation;

(ii) If the exporter or producer received a countervailable subsidy, calculations demonstrating that the amount of net countervailable subsidies received was de minimis during the period of investigation;

(iii) If the exporter is not the producer of the subject merchandise, certifications from the suppliers and producers of the subject merchandise that those persons received zero or de minimis net countervailable subsidies during the period of the investigation; and

(iv) A certification from the government of the affected country that the government did not provide the exporter or producer with more than de minimis net countervailable subsidies during the period of investigation.

§ 351.205 Preliminary determination.

(a) *Introduction.* A preliminary determination in an antidumping or countervailing duty investigation constitutes the first point at which the Secretary may provide a remedy if the Secretary preliminarily finds that dumping or countervailable subsidization has occurred. The remedy (sometimes referred to as ''provisional measures'') usually takes the form of a bonding requirement to ensure payment if antidumping or countervailing duties ultimately are imposed. Whether the Secretary's preliminary determination is affirmative or negative, the investigation continues. This section contains rules regarding deadlines for preliminary determinations, postponement of preliminary determinations, notices of preliminary determinations, and the effects of affirmative preliminary determinations.

(b) *Deadline for preliminary determination.* The deadline for a preliminary determination under section 703(b) or section 733(b) of the Act will be:

(1) Normally not later than 140 days in an antidumping investigation (65 days in a countervailing duty investigation) after the date on which the Secretary initiated the investigation (see section 703(b)(1) or section 733(b)(1)(A) of the Act);

(2) Not later than 190 days in an antidumping investigation (130 days in a countervailing duty investigation) after the date on which the Secretary initiated the investigation if the Secretary postpones the preliminary determination at petitioner's request or because the Secretary determines that the investigation is extraordinarily complicated (see section 703(c)(1) or section 733(c)(1) of the Act);

(3) In a countervailing duty investigation, not later than 250 days after the date on which the proceeding began if the Secretary postpones the preliminary determination due to an upstream subsidy allegation (up to 310 days if the Secretary also postponed the preliminary determination at the request of the petitioner or because the Secretary determined that the investigation is extraordinarily complicated) (see section 703(c)(1) and section 703(g)(1) of the Act);

(4) Within 90 days after initiation in an antidumping investigation, and on an expedited basis in a countervailing duty investigation, where verification has been waived (see section 703(b)(3) or section 733(b)(2) of the Act);

(5) In a countervailing duty investigation, on an expedited basis and within 65 days after the date on which the Secretary initiated the investigation if the sole subsidy alleged in the petition was the derogation of an international undertaking on official export credits (see section 702(b)(3) and section 703(b)(2) of the Act);

(6) In a countervailing duty investigation, not later than 60 days after the date on which the Secretary initiated the investigation if the only subsidy under investigation is a subsidy with respect to which the Secretary received notice from the United States Trade Representative of a violation of Article 8 of the Subsidies Agreement (see section 703(b)(5) of the Act); and

(7) In an antidumping investigation, within the deadlines set forth in section 733(b)(1)(B) of the Act if the investigation involves short life cycle merchandise (see section 733(b)(1)(B) and section 739 of the Act).

(c) *Contents of preliminary determination and publication of notice.* A preliminary determination will include a preliminary finding on critical circumstances, if appropriate, under section 703(e)(1) or section 733(e)(1) of the Act (whichever is applicable). The Secretary will publish in the Federal Register notice of ''Affirmative (Negative) Preliminary Antidumping (Countervailing Duty) Determination,'' including the rates, if any, and an invitation for argument consistent with § 351.309.

(d) *Effect of affirmative preliminary determination.* If the preliminary determination is affirmative, the Secretary will take the actions described in section 703(d) or section 733(d) of the Act (whichever is applicable). In making information available to the Commission under section 703(d)(3) or section 733(d)(3) of the Act, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the preliminary determination and which the Commission may consider relevant to its injury determination.

(e) *Postponement at the request of the petitioner.* A petitioner must submit a request for postponement of the preliminary determination (see section 703(c)(1)(A) or section 733(c)(1)(A) of the Act) 25 days or more before the scheduled date of the preliminary determination, and must state the reasons for the request. The Secretary will grant the request, unless the Secretary finds compelling reasons to deny the request.

(f) *Notice of postponement.* (1) If the Secretary decides to postpone the preliminary determination at the request of the petitioner or because the investigation is extraordinarily complicated, the Secretary will notify all parties to the proceeding not later than 20 days before the scheduled date of the preliminary determination, and will publish in the Federal Register notice of ''Postponement of Preliminary Antidumping (Countervailing Duty) Determination,'' stating the reasons for the postponement (see section 703(c)(2) or section 733(c)(2) of the Act).

(2) If the Secretary decides to postpone the preliminary determination due to an allegation of upstream subsidies, the Secretary will notify all parties to the proceeding not later than the scheduled date of the preliminary determination and will publish in the Federal Register notice of ''Postponement of Preliminary Countervailing Duty Determination,'' stating the reasons for the postponement.

§ 351.206 Critical circumstances.

(a) *Introduction.* Generally, antidumping or countervailing duties are imposed on entries of merchandise made on or after the date on which the Secretary first imposes provisional measures (most often the date on which notice of an affirmative preliminary determination is published in the Federal Register). However, if the Secretary finds that ''critical circumstances'' exist, duties may be

imposed retroactively on merchandise entered up to 90 days before the imposition of provisional measures. This section contains procedural and substantive rules regarding allegations and findings of critical circumstances.

(b) *In general.* If a petitioner submits to the Secretary a written allegation of critical circumstances, with reasonably available factual information supporting the allegation, 21 days or more before the scheduled date of the Secretary's final determination, or on the Secretary's own initiative in a self-initiated investigation, the Secretary will make a finding whether critical circumstances exist, as defined in section 705(a)(2) or section 735(a)(3) of the Act (whichever is applicable).

(c) *Preliminary finding.* (1) If the petitioner submits an allegation of critical circumstances 30 days or more before the scheduled date of the Secretary's final determination, the Secretary, based on the available information, will make a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist, as defined in section 703(e)(1) or section 733(e)(1) of the Act (whichever is applicable).

(2) The Secretary will issue the preliminary finding:

(i) Not later than the preliminary determination, if the allegation is submitted 20 days or more before the scheduled date of the preliminary determination; or

(ii) Within 30 days after the petitioner submits the allegation, if the allegation is submitted later than 20 days before the scheduled date of the preliminary determination. The Secretary will notify the Commission and publish in the Federal Register notice of the preliminary finding.

(d) *Suspension of liquidation.* If the Secretary makes an affirmative preliminary finding of critical circumstances, the provisions of section 703(e)(2) or section 733(e)(2) of the Act (whichever is applicable) regarding the retroactive suspension of liquidation will apply.

(e) *Final finding.* For any allegation of critical circumstances submitted 21 days or more before the scheduled date of the Secretary's final determination, the Secretary will make a final finding on critical circumstances, and will take appropriate action under section 705(c)(4) or section 735(c)(4) of the Act (whichever is applicable).

(f) *Findings in self-initiated investigations.* In a self-initiated investigation, the Secretary will make preliminary and final findings on critical circumstances without regard to the time limits in paragraphs (c) and (e) of this section.

(g) *Information regarding critical circumstances.* The Secretary may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise if, at any time after the initiation of an investigation, the Secretary makes the findings described in section 702(e) or section 732(e) of the Act (whichever is applicable) regarding the possible existence of critical circumstances.

(h) *Massive imports.* (1) In determining whether imports of the subject merchandise have been massive under section 705(a)(2)(B) or section 735(a)(3)(B) of the Act, the Secretary normally will examine:

(i) The volume and value of the imports;

(ii) Seasonal trends; and

(iii) The share of domestic consumption accounted for by the imports.

(2) In general, unless the imports during the ''relatively short period'' (see paragraph (i) of this section) have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.

(i) *Relatively short period.* Under section 705(a)(2)(B) or section 735(a)(3)(B) of the Act, the Secretary normally will consider a ''relatively short period'' as the period beginning on the date the proceeding begins and ending at least three months later. However, if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a period of not less than three months from that earlier time.

§ 351.207 Termination of investigation.

(a) *Introduction.* ''Termination'' is a term of art that refers to the end of an antidumping or countervailing duty proceeding in which an order has not yet been issued. The Act establishes a variety of mechanisms by which an investigation may be terminated, most of which are dealt with in this section. For rules regarding the termination of a suspended investigation following a review under section 751 of the Act, see § 351.222.

(b) *Withdrawal of petition; self-initiated investigations.* (1) *In general.* The Secretary may terminate an investigation under section 704(a)(1)(A) or section 734(a)(1)(A) (withdrawal of petition) or under section 704(k) or section 734(k) (self-initiated investigation) of the Act, provided that the Secretary concludes that termination is in the public interest. If the Secretary terminates an investigation, the Secretary will publish in the Federal Register notice of ''Termination of Antidumping (Countervailing Duty) Investigation,'' together with, when appropriate, a copy of any correspondence with the petitioner forming the basis of the withdrawal and the termination. (For the treatment in a subsequent investigation of records compiled in an investigation in which the petition was withdrawn, see section 704(a)(1)(B) or section 734(a)(1)(B) of the Act.)

(2) *Withdrawal of petition based on acceptance of quantitative restriction agreements.* In addition to the requirements of paragraph (b)(1) of this section, if a termination is based on the acceptance of an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise, the Secretary will apply the provisions of section 704(a)(2) or section 734(a)(2) of the Act (whichever is applicable) regarding public interest and consultations with consuming industries and producers and workers.

(c) *Lack of interest.* The Secretary may terminate an investigation based upon lack of interest (see section 782(h)(1) of the Act). Where the Secretary terminates an investigation under this paragraph, the Secretary will publish the notice described in paragraph (b)(1) of this section.

(d) *Negative determination.* An investigation terminates automatically upon publication in the Federal Register of the Secretary's negative final determination or the Commission's negative preliminary or final determination.

(e) *End of suspension of liquidation.* When an investigation terminates, if the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of termination referred to in paragraph (b) of this section or on the date of publication of a negative determination referred to in paragraph (d) of this section, and will instruct the Customs Service to release any cash deposit or bond.

§ 351.208 Suspension of investigation.

(a) *Introduction.* In addition to the imposition of duties, the Act also permits the Secretary to suspend an antidumping or countervailing duty investigation by accepting a suspension agreement (referred to in the WTO

Agreements as an ''undertaking''). Briefly, in a suspension agreement, the exporters and producers or the foreign government agree to modify their behavior so as to eliminate dumping or subsidization or the injury caused thereby. If the Secretary accepts a suspension agreement, the Secretary will ''suspend'' the investigation and thereafter will monitor compliance with the agreement. This section contains rules for entering into suspension agreements and procedures for suspending an investigation.

(b) *In general.* The Secretary may suspend an investigation under section 704 or section 734 of the Act and this section.

(c) *Definition of ''substantially all.''* Under section 704 and section 734 of the Act, exporters that account for ''substantially all'' of the merchandise means exporters and producers that have accounted for not less than 85 percent by value or volume of the subject merchandise during the period for which the Secretary is measuring dumping or countervailable subsidization in the investigation or such other period that the Secretary considers representative.

(d) *Monitoring.* In monitoring a suspension agreement under section 704(c), section 734(c), or section 734(l) of the Act (agreements to eliminate injurious effects or to restrict the volume of imports), the Secretary will not be obliged to ascertain on a continuing basis the prices in the United States of the subject merchandise or of domestic like products.

(e) *Exports not to increase during interim period.* The Secretary will not accept a suspension agreement under section 704(b)(2) or section 734(b)(1) of the Act (elimination of dumping or countervailable subsidization or the cessation of exports) unless the agreement ensures that the quantity of the subject merchandise exported during the interim period set forth in the agreement does not exceed the quantity of the merchandise exported during a period of comparable duration that the Secretary considers representative.

(f) *Procedure for suspension of investigation.*

(1) *Submission of proposed suspension agreement.* (i) *In general.* As appropriate, the exporters and producers or, in an investigation involving a nonmarket economy country, the government, must submit to the Secretary a proposed suspension agreement within:

(A) In an antidumping investigation, 15 days after the date of issuance of the preliminary determination, or

(B) In a countervailing duty investigation, 5 days after the date of issuance of the preliminary determination. Where a proposed suspension agreement is submitted in an antidumping investigation, an exporter or producer or, in an antidumping investigation involving a nonmarket economy country, the government, may request postponement of the final determination under section 735(a)(2) of the Act (see § 351.210(e)). Where the final determination in a countervailing duty investigation is postponed under section 703(g)(2) or section 705(a)(1) of the Act (see § 351.210(b)(3) and § 351.210(i)), the time limits in paragraphs (f)(1)(i), (f)(2)(i), (f)(3), and (g)(1) of this section applicable to countervailing duty investigations will be extended to coincide with the time limits in such paragraphs applicable to antidumping investigations.

(ii) *Special rule for regional industry determination.* If the Commission makes a regional industry determination in its final affirmative determination under section 705(b) or section 735(b) of the Act but not in its preliminary affirmative determination under section 703(a) or section 733(a) of the Act, the exporters and producers or, in an investigation involving a nonmarket economy country, the government, must submit to the Secretary any proposed suspension agreement within 15 days of the publication in the Federal Register of the antidumping or countervailing duty order.

(2) *Notification and consultation.* In fulfilling the requirements of section 704 or section 734 of the Act (whichever is applicable), the Secretary will take the following actions:

(i) *In general.* The Secretary will notify all parties to the proceeding of the proposed suspension of an investigation and provide to the petitioner a copy of the suspension agreement preliminarily accepted by the Secretary (the agreement must contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of section 704 or section 734 of the Act) within:

(A) In an antidumping investigation, 30 days after the date of issuance of the preliminary determination, or

(B) In a countervailing duty investigation, 15 days after the date of issuance of the preliminary determination; or

(ii) *Special rule for regional industry determination.* If the Commission makes a regional industry determination in its final affirmative determination under section 705(b) or section 735(b) of the Act but not in its preliminary affirmative determination under section 703(a) or section 733(a) of the Act, the Secretary, within 15 days of the submission of a proposed suspension agreement under paragraph (f)(1)(ii) of this section, will notify all parties to the proceeding of the proposed suspension agreement and provide to the petitioner a copy of the agreement preliminarily accepted by the Secretary (such agreement must contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of section 704 or section 734 of the Act); and

(iii) *Consultation.* The Secretary will consult with the petitioner concerning the proposed suspension of the investigation.

(3) *Opportunity for comment.* The Secretary will provide all interested parties and United States government agencies an opportunity to submit written argument and factual information concerning the proposed suspension of the investigation within:

(i) In an antidumping investigation, 50 days after the date of issuance of the preliminary determination,

(ii) In a countervailing duty investigation, 35 days after the date of issuance of the preliminary determination, or

(iii) In a regional industry case described in paragraph (f)(1)(ii) of this section, 35 days after the date of issuance of an order.

(g) *Acceptance of suspension agreement.*

(1) The Secretary may accept an agreement to suspend an investigation within:

(i) In an antidumping investigation, 60 days after the date of issuance of the preliminary determination,

(ii) In a countervailing duty investigation, 45 days after the date of issuance of the preliminary determination, or

(iii) In a regional industry case described in paragraph (f)(1)(ii) of this section, 45 days after the date of issuance of an order.

(2) If the Secretary accepts an agreement to suspend an investigation, the Secretary will take the actions described in section 704(f), section 704(m)(3), section 734(f), or section 734(l)(3) of the Act (whichever is applicable), and will publish in the Federal Register notice of ''Suspension of Antidumping (Countervailing Duty) Investigation,'' including the text of the agreement. If the Secretary has not

already published notice of an affirmative preliminary determination, the Secretary will include that notice. In accepting an agreement, the Secretary may rely on factual or legal conclusions the Secretary reached in or after the affirmative preliminary determination.

(h) *Continuation of investigation.* (1) A request to the Secretary under section 704(g) or section 734(g) of the Act for the continuation of the investigation must be made in writing. In addition, the request must be simultaneously filed with the Commission, and the requester must so certify in submitting the request to the Secretary.

(2) If the Secretary and the Commission make affirmative final determinations in an investigation that has been continued, the suspension agreement will remain in effect in accordance with the factual and legal conclusions in the Secretary's final determination. If either the Secretary or the Commission makes a negative final determination, the agreement will have no force or effect.

(i) *Merchandise imported in excess of allowed quantity.* (1) The Secretary may instruct the Customs Service not to accept entries, or withdrawals from warehouse, for consumption of subject merchandise in excess of any quantity allowed by a suspension agreement under section 704 or section 734 of the Act, including any quantity allowed during the interim period (see paragraph (e) of this section).

(2) Imports in excess of the quantity allowed by a suspension agreement, including any quantity allowed during the interim period (see paragraph (e) of this section), may be exported or destroyed under Customs Service supervision, except that if the agreement is under section 704(c)(3) or section 734(l) of the Act (restrictions on the volume of imports), the excess merchandise, with the approval of the Secretary, may be held for future opening under the agreement by placing it in a foreign trade zone or by entering it for warehouse.

§ 351.209 Violation of suspension agreement.

(a) *Introduction.* A suspension agreement remains in effect until the underlying investigation is terminated (see §§ 351.207 and 351.222). However, if the Secretary finds that a suspension agreement has been violated or no longer meets the requirements of the Act, the Secretary may either cancel or revise the agreement. This section contains rules regarding cancellation and revisions of suspension agreements.

(b) *Immediate determination.* If the Secretary determines that a signatory has violated a suspension agreement, the Secretary, without providing interested parties an opportunity to comment, will:

(1) Order the suspension of liquidation in accordance with section 704(i)(1)(A) or section 734(i)(1)(A) of the Act (whichever is applicable) of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (i) 90 days before the date of publication of the notice of cancellation of the agreement or (ii) the date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which was in violation of the agreement;

(2) If the investigation was not completed under section 704(g) or section 734(g) of the Act, resume the investigation as if the Secretary had made an affirmative preliminary determination on the date of publication of the notice of cancellation, update previously submitted information where the Secretary deems it appropriate to do so, and impose provisional measures by instructing the Customs Service to require for each entry of the subject merchandise suspended under paragraph (b)(1) of this section a cash deposit or bond at the rates determined in the affirmative preliminary determination;

(3) If the investigation was completed under section 704(g) or section 734(g) of the Act, issue an antidumping order or countervailing duty order (whichever is applicable), and, for all entries subject to suspension of liquidation under paragraph (b)(1) of this section, instruct the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit at the rates determined in the affirmative final determination;

(4) Notify all persons who are or were parties to the proceeding, the Commission, and, if the Secretary determines that the violation was intentional, the Commissioner of Customs; and

(5) Publish in the Federal Register notice of ''Antidumping (Countervailing Duty) Order (Resumption of Antidumping (Countervailing Duty) Investigation); Cancellation of Suspension Agreement.''

(c) *Determination after notice and comment.* (1) If the Secretary has reason to believe that a signatory has violated a suspension agreement, or that an agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act, but the Secretary does not have sufficient information to determine that a signatory has violated the agreement (see paragraph (b) of this section), the Secretary will publish in the Federal Register notice of ''Invitation for Comment on Antidumping (Countervailing Duty) Suspension Agreement.''

(2) After publication of the notice inviting comment and after consideration of comments received the Secretary will:

(i) Determine whether any signatory has violated the suspension agreement; or

(ii) Determine whether the suspension agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act.

(3) If the Secretary determines that a signatory has violated the suspension agreement, the Secretary will take appropriate action as described in paragraphs (b)(1) through (b)(5) of this section.

(4) If the Secretary determines that a suspension agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act, the Secretary will:

(i) Take appropriate action as described in paragraphs (b)(1) through (b)(5) of this section; except that, under paragraph (b)(1)(ii) of this section, the Secretary will order the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of 90 days before the date of publication of the notice of suspension of liquidation or the date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which does not meet the requirements of section 704(d)(1) of the Act;

(ii) Continue the suspension of investigation by accepting a revised suspension agreement under section 704(b) or section 734(b) of the Act (whether or not the Secretary accepted the original agreement under such section) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) or section 734(d) of the Act, and publish in the Federal Register notice of ''Revision of Agreement Suspending Antidumping (Countervailing Duty) Investigation''; or

(iii) Continue the suspension of investigation by accepting a revised suspension agreement under section 704(c), section 734(c), or section 734(l) of the Act (whether or not the Secretary accepted the original agreement under such section) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) or section 734(d) of the Act, and publish in the Federal Register

notice of ''Revision of Agreement Suspending Antidumping (Countervailing Duty) Investigation.'' If the Secretary continues to suspend an investigation based on a revised agreement accepted under section 704(c), section 734(c), or section 734(l) of the Act, the Secretary will order suspension of liquidation to begin. The suspension will not end until the Commission completes any requested review of the revised agreement under section 704(h) or section 734(h) of the Act. If the Commission receives no request for review within 20 days after the date of publication of the notice of the revision, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release any cash deposit or bond. If the Commission undertakes a review under section 704(h) or section 734(h) of the Act, the provisions of sections 704(h)(2) and (3) and sections 734(h)(2) and (3) of the Act will apply.

(5) If the Secretary decides neither to consider the suspension agreement violated nor to revise the agreement, the Secretary will publish in the Federal Register notice of the Secretary's decision under paragraph (c)(2) of this section, including a statement of the factual and legal conclusions on which the decision is based.

(d) *Additional signatories.* If the Secretary decides that a suspension agreement no longer will completely eliminate the injurious effect of exports to the United States of subject merchandise under section 704(c)(1) or section 734(c)(1) of the Act, or that the signatory exporters no longer account for substantially all of the subject merchandise, the Secretary may revise the agreement to include additional signatory exporters.

(e) *Definition of ''violation.''* Under this section, ''violation'' means noncompliance with the terms of a suspension agreement caused by an act or omission of a signatory, except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential.

§ 351.210 Final determination.

(a) *Introduction.* A ''final determination'' in an antidumping or countervailing duty investigation constitutes a final decision by the Secretary as to whether dumping or countervailable subsidization is occurring. If the final determination is negative, the proceeding, including the injury investigation conducted by the Commission, terminates. If the final determination is affirmative, in most instances the Commission issues a final injury determination. In addition, if the preliminary determination was negative but the final determination is affirmative, the Secretary will impose provisional measures. This section contains rules regarding deadlines for, and postponement of, final determinations, contents of final determinations, and the effects of final determinations.

(b) *Deadline for final determination.* The deadline for a final determination under section 705(a)(1) or section 735(a)(1) of the Act will be:

(1) Normally, not later than 75 days after the date of the Secretary's preliminary determination (see section 705(a)(1) or section 735(a)(1) of the Act);

(2) In an antidumping investigation, not later than 135 days after the date of publication of the preliminary determination if the Secretary postpones the final determination at the request of:

(i) The petitioner, if the preliminary determination was negative (see section 735(a)(2)(B) of the Act); or

(ii) Exporters or producers who account for a significant proportion of exports of the subject merchandise, if the preliminary determination was affirmative (see section 735(a)(2)(A) of the Act);

(3) In a countervailing duty investigation, not later than 165 days after the preliminary determination, if, after the preliminary determination, the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation (see section 703(g)(2) of the Act); or

(4) In a countervailing duty investigation, the same date as the date of the final antidumping determination, if:

(i) In a situation where the Secretary simultaneously initiated antidumping and countervailing duty investigations on the subject merchandise (from the same or other countries), the petitioner requests that the final countervailing duty determination be postponed to the date of the final antidumping determination; and

(ii) If the final countervailing duty determination is not due on a later date because of postponement due to an allegation of upstream subsidies under section 703(g) of the Act (see section 705(a)(1) of the Act).

(c) *Contents of final determination and publication of notice.* The final determination will include, if appropriate, a final finding on critical circumstances under section 705(a)(2) or section 735(a)(3) of the Act (whichever is applicable). The Secretary will publish in the Federal Register notice of ''Affirmative (Negative) Final Antidumping (Countervailing Duty) Determination,'' including the rates, if any.

(d) *Effect of affirmative final determination.* If the final determination is affirmative, the Secretary will take the actions described in section 705(c)(1) or section 735(c)(1) of the Act (whichever is applicable). In addition, in the case of a countervailing duty investigation involving subject merchandise from a country that is not a Subsidies Agreement country, the Secretary will instruct the Customs Service to require a cash deposit, as provided in section 706(a)(3) of the Act, for each entry of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the order under section 706(a) of the Act.

(e) *Request for postponement of final antidumping determination.* A request to postpone a final antidumping determination under section 735(a)(2) of the Act (see paragraph (b)(2) of this section) must be submitted in writing within the scheduled date of the final determination. The Secretary may grant the request, unless the Secretary finds compelling reasons to deny the request.

(f) *Deferral of decision concerning upstream subsidization to review.* Notwithstanding paragraph (b)(3) of this section, if the petitioner so requests in writing and the preliminary countervailing duty determination was affirmative, the Secretary, instead of postponing the final determination, may defer a decision concerning upstream subsidization until the conclusion of the first administrative review of a countervailing duty order, if any (see section 703(g)(2)(B)(i) of the Act).

(g) *Notification of postponement.* If the Secretary postpones a final determination under paragraph (b)(2), (b)(3), or (b)(4) of this section, the Secretary will notify promptly all parties to the proceeding of the postponement, and will publish in the Federal Register notice of ''Postponement of Final Antidumping (Countervailing Duty) Determination,'' stating the reasons for the postponement.

(h) *Termination of suspension of liquidation in a countervailing duty investigation.* If the Secretary postpones a final countervailing duty determination, the Secretary will end any suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and will not resume it unless and until the Secretary publishes a countervailing duty order.

(i) *Postponement of final countervailing duty determination for simultaneous investigations.* A request by the petitioner to postpone a final countervailing duty determination to the date of the final antidumping determination must be submitted in writing within five days of the date of publication of the preliminary countervailing duty determination (see section 705(a)(1) and paragraph (b)(4) of this section).

(j) *Commission access to information.* If the final determination is affirmative, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the final determination and that the Commission may consider relevant to its injury determination (see section 705(c)(1)(A) or section 735(c)(1)(A) of the Act).

(k) *Effect of negative final determination.* An investigation terminates upon publication in the Federal Register of the Secretary's or the Commission's negative final determination, and the Secretary will take the relevant actions described in section 705(c)(2) or section 735(c)(2) of the Act (whichever is applicable).

§ 351.211 Antidumping order and countervailing duty order.

(a) *Introduction.* The Secretary issues an order when both the Secretary and the Commission (except in the case of merchandise from a non-Subsidies Agreement country) have made final affirmative determinations. The issuance of an order ends the investigative phase of a proceeding. Generally, upon the issuance of an order, importers no longer may post bonds as security for antidumping or countervailing duties, but instead must make a cash deposit of estimated duties. An order remains in effect until it is revoked. This section contains rules regarding the issuance of orders in general, as well as special rules for orders where the Commission has found a regional industry to exist.

(b) *In general.* Not later than seven days after receipt of notice of an affirmative final injury determination by the Commission under section 705(b) or section 735(b) of the Act, or, in a countervailing duty proceeding involving subject merchandise from a country not entitled to an injury test (see § 351.101(b)), simultaneously with publication of an affirmative final countervailing duty determination by the Secretary, the Secretary will publish in the Federal Register an ''Antidumping Order'' or ''Countervailing Duty Order'' that:

(1) Instructs the Customs Service to assess antidumping duties or countervailing duties (whichever is applicable) on the subject merchandise, in accordance with the Secretary's instructions at the completion of each review requested under § 351.213(b) (administrative review), § 351.214(b) (new shipper review), or § 351.215(b) (expedited antidumping review), or if a review is not requested, in accordance with the Secretary's assessment instructions under § 351.212(c);

(2) Instructs the Customs Service to require a cash deposit of estimated antidumping or countervailing duties at the rates included in the Secretary's final determination; and

(3) Orders the suspension of liquidation ended for all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's final determination, and instructs the Customs Service to release the cash deposit or bond on those entries, if in its final determination, the Commission found a threat of material injury or material retardation of the establishment of an industry, unless the Commission in its final determination also found that, absent the suspension of liquidation ordered under section 703(d)(2) or section 733(d)(2) of the Act, it would have found material injury (see section 706(b) or section 736(b) of the Act).

(c) *Special rule for regional industries.* (1) *In general.* If the Commission, in its affirmative final injury determination, finds a regional industry under section 771(4)(C) of the Act, the Secretary will, to the maximum extent possible, modify the contents of an order in a manner consistent with section 706(c) or section 736(d) of the Act (whichever is applicable).

(2) *Request for exception from the assessment of duties.* An exporter or producer seeking an exception from the assessment of antidumping or countervailing duties (see section 706(c) or section 736(d) of the Act) must submit a certification that it did not export subject merchandise for sale in the region concerned during the period of investigation, and that it will not do so in the future so long as the antidumping or countervailing duty order is in effect. In addition, each such exporter or producer must submit a certification from each of its U.S. importers of the subject merchandise that no subject merchandise of that exporter or producer was entered into the United States outside such region and then sold into the region during or after the period of investigation. These certificates must be submitted to the Secretary no later than fifteen days after the issuance of the Commission's affirmative final determination.

§ 351.212 Assessment of antidumping and countervailing duties; provisional measures deposit cap; interest on certain overpayments and underpayments.

(a) *Introduction.* Unlike the systems of some other countries, the United States uses a ''retrospective'' assessment system under which final liability for antidumping and countervailing duties is determined after merchandise is imported. Generally, the amount of duties to be assessed is determined in a review of the order covering a discrete period of time. If a review is not requested, duties are assessed at the rate established in the completed review covering the most recent prior period or, if no review has been completed, the cash deposit rate applicable at the time merchandise was entered. This section contains rules regarding the assessment of duties, the provisional measures deposit cap, and interest on over- or undercollections of estimated duties.

(b) *Assessment of antidumping and countervailing duties as the result of a review.*

(1) *Antidumping duties.* If the Secretary has conducted a review of an antidumping order under § 351.213 (administrative review), § 351.214 (new shipper review), or § 351.215 (expedited antidumping review), the Secretary normally will calculate an assessment rate for each importer of subject merchandise covered by the review. The Secretary normally will calculate the assessment rate by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes. The Secretary then will instruct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise.

(2) *Countervailing duties.* If the Secretary has conducted a review of a countervailing duty order under § 351.213 (administrative review) or § 351.214 (new shipper review), the Secretary normally will instruct the Customs Service to assess countervailing duties by applying the rates included in the final results of the review to the entered value of the merchandise.

(c) *Automatic assessment of antidumping and countervailing duties if no review is requested.*

(1) If the Secretary does not receive a timely request for an administrative review of an order (see paragraph (b)(1), (b)(2), or (b)(3) of § 351.213), the

Secretary, without additional notice, will instruct the Customs Service to (i) assess antidumping duties or countervailing duties, as the case may be, on the subject merchandise described in § 351.213(e) at rates equal to the rates determined in the most recently completed segment of the proceeding, and (ii) to continue to collect the cash deposits previously ordered.

(2) If the Secretary receives a timely request for an administrative review of an order (see paragraph (b)(1), (b)(2), or (b)(3) of § 351.213), the Secretary will instruct the Customs Service to assess antidumping duties or countervailing duties, and to continue to collect cash deposits, on the merchandise not covered by the request in accordance with paragraph (c)(1) of this section.

(3) The automatic assessment provisions of paragraphs (c)(1) and (c)(2) of this section will not apply to subject merchandise that is the subject of a new shipper review (see § 351.214) or an expedited antidumping review (see § 351.215).

(d) *Provisional measures deposit cap.* This paragraph applies to subject merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's notice of an affirmative final injury determination or, in a countervailing duty proceeding that involves merchandise from a country that is not entitled to an injury test, the date of the Secretary's notice of an affirmative final countervailing duty determination. If the amount of duties that would be assessed by applying the rates included in the Secretary's affirmative preliminary or affirmative final antidumping or countervailing duty determination (''provisional duties'') is different from the amount of duties that would be assessed by applying the assessment rate under paragraphs (b)(1) and (b)(2) of this section (''final duties''), the Secretary will instruct the Customs Service to disregard the difference to the extent that the provisional duties are less than the final duties, and to assess antidumping or countervailing duties at the assessment rate if the provisional duties exceed the final duties.

(e) *Interest on certain overpayments and underpayments.* Under section 778 of the Act, the Secretary will instruct the Customs Service to calculate interest for each entry on or after the publication of the order from the date that a cash deposit is required to be deposited for the entry through the date of liquidation of the entry.

§ 351.213 Administrative review of orders and suspension agreements under section 751(a)(1) of the Act.

(a) *Introduction.* As noted in § 351.212(a), the United States has a ''retrospective'' assessment system under which final liability for antidumping and countervailing duties is determined after merchandise is imported. Although duty liability may be determined in the context of other types of reviews, the most frequently used procedure for determining final duty liability is the administrative review procedure under section 751(a)(1) of the Act. This section contains rules regarding requests for administrative reviews and the conduct of such reviews.

(b) *Request for administrative review.* (1) Each year during the anniversary month of the publication of an antidumping or countervailing duty order, a domestic interested party or an interested party described in section 771(9)(B) of the Act (foreign government) may request in writing that the Secretary conduct an administrative review under section 751(a)(1) of the Act of specified individual exporters or producers covered by an order (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis), if the requesting person states why the person desires the Secretary to review those particular exporters or producers.

(2) During the same month, an exporter or producer covered by an order (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis) may request in writing that the Secretary conduct an administrative review of only that person.

(3) During the same month, an importer of the merchandise may request in writing that the Secretary conduct an administrative review of only an exporter or producer (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis) of the subject merchandise imported by that importer.

(4) Each year during the anniversary month of the publication of a suspension of investigation, an interested party may request in writing that the Secretary conduct an administrative review of all producers or exporters covered by an agreement on which the suspension of investigation was based.

(c) *Deferral of administrative review.* (1) *In general.* The Secretary may defer the initiation of an administrative review, in whole or in part, for one year if:

(i) The request for administrative review is accompanied by a request that the Secretary defer the review, in whole or in part; and

(ii) The exporter or producer for which deferral is requested, importers of subject merchandise of that exporter or producer, domestic interested parties, or, in a countervailing duty proceeding, the foreign government do not object to the deferral.

(2) *Timeliness of objection to deferral.* An objection to a deferral of the initiation of administrative review under paragraph (c)(1)(ii) of this section must be submitted within 15 days after the end of the anniversary month in which the administrative review is requested.

(3) *Procedures and deadlines.* If the Secretary defers the initiation of an administrative review, the Secretary will publish notice of the deferral in the Federal Register. The Secretary will initiate the administrative review in the month immediately following the next anniversary month, and the deadline for issuing preliminary results of review (see paragraph (h)(1) of this section) will run from the last day of the next anniversary month.

(d) *Rescission of administrative review.* (1) *Withdrawal of request for review.* The Secretary may rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request not later than 90 days after the date of publication of notice of initiation of the requested review.

(2) *Self-initiated review.* The Secretary may rescind an administrative review that was self-initiated by the Secretary.

(3) *No shipments.* The Secretary may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.

(4) *Notice of rescission.* If the Secretary rescinds an administrative review (in whole or in part), the Secretary will publish in the Federal Register notice of ''Rescission of Antidumping (Countervailing Duty) Administrative Review'' or, if appropriate, ''Partial Rescission of Antidumping (Countervailing Duty) Administrative Review.''

(e) *Period of review.* (1) *Antidumping proceedings.* (i) Except as provided in paragraph (e)(1)(ii) of this section, an administrative review under this section normally will cover, as appropriate, entries, exports, or sales of the subject

merchandise during the 12 months immediately preceding the most recent anniversary month.

(ii) For requests received during the first anniversary month after publication of an order or suspension of investigation, an administrative review under this section will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part or suspension of investigation to the end of the month immediately preceding the first anniversary month.

(2) *Countervailing duty proceedings.* (i) Except as provided in paragraph (e)(2)(ii) of this section, an administrative review under this section normally will cover entries or exports of the subject merchandise during the most recently completed calendar year. If the review is conducted on an aggregate basis, the Secretary normally will cover entries or exports of the subject merchandise during the most recently completed fiscal year for the government in question.

(ii) For requests received during the first anniversary month after publication of an order or suspension of investigation, an administrative review under this section will cover entries or exports, as appropriate, during the period from the date of suspension of liquidation under this part or suspension of investigation to the end of the most recently completed calendar or fiscal year as described in paragraph (e)(2)(i) of this section.

(f) *Voluntary respondents.* In an administrative review, the Secretary will examine voluntary respondents in accordance with section 782(a) of the Act and § 351.204(d).

(g) *Procedures.* The Secretary will conduct an administrative review under this section in accordance with § 351.221.

(h) *Time limits.* (1) *In general.* The Secretary will issue preliminary results of review (see § 351.221(b)(4)) within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of review (see § 351.221(b)(5)) within 120 days after the date on which notice of the preliminary results was published in the Federal Register.

(2) *Exception.* If the Secretary determines that it is not practicable to complete the review within the time specified in paragraph (h)(1) of this section, the Secretary may extend the 245-day period to 365 days and may extend the 120-day period to 180 days. If the Secretary does not extend the time for issuing preliminary results, the Secretary may extend the time for issuing final results from 120 days to 300 days.

(i) *Possible cancellation or revision of suspension agreement.* If during an administrative review the Secretary determines or has reason to believe that a signatory has violated a suspension agreement or that the agreement no longer meets the requirements of section 704 or section 734 of the Act (whichever is applicable), the Secretary will take appropriate action under section 704(i) or section 734(i) of the Act and § 351.209. The Secretary may suspend the time limit in paragraph (h) of this section while taking action under § 351.209.

(j) *Absorption of antidumping duties.* (1) During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order under § 351.211, or a determination under § 351.218(d) (sunset review), the Secretary, if requested within 30 days of the initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer which is affiliated with such exporter or producer. The Secretary will notify the Commission of its findings regarding such duty absorption.

(2) For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998.

(k) *Administrative reviews of countervailing duty orders conducted on an aggregate basis.*

(1) *Request for zero rate.* Where the Secretary conducts an administrative review of a countervailing duty on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary will consider and review requests for individual assessment and cash deposit rates of zero to the extent practicable. An exporter or producer that desires a zero rate must submit:

(i) A certification by the exporter or producer that it received zero or de minimis net countervailable subsidies during the period of review;

(ii) If the exporter or producer received a countervailable subsidy, calculations demonstrating that the amount of net countervailable subsidies received was de minimis during the period of review;

(iii) If the exporter is not the producer of the subject merchandise, certifications from the suppliers and producers of the subject merchandise that those persons received zero or de minimis net countervailable subsidies during the period of the review; and

(iv) A certification from the government of the affected country that the government did not provide the exporter or producer with more than de minimis net countervailable subsidies during the period of review.

(2) *Application of country-wide subsidy rate.* With the exception of assessment and cash deposit rates of zero determined under paragraph (k)(1) of this section, if, in the final results of an administrative review under this section of a countervailing duty order, the Secretary calculates a single country-wide subsidy rate under section 777A(e)(2)(B) of the Act, that rate will supersede, for cash deposit purposes, all rates previously determined in the countervailing duty proceeding in question.

§ 351.214 New shipper reviews under section 751(a)(2)(B) of the Act.

(a) *Introduction.* The URAA established a new procedure by which so-called ''new shippers'' can obtain their own individual dumping margin or countervailable subsidy rate on an expedited basis. In general, a new shipper is an exporter or producer that did not export, and is not affiliated with an exporter or producer that did export, to the United States during the period of investigation. This section contains rules regarding requests for new shipper reviews and procedures for conducting such reviews. In addition, this section contains rules regarding requests for expedited reviews by noninvestigated exporters in certain countervailing duty proceedings and procedures for conducting such reviews.

(b) *Request for new shipper review.* A request for a new shipper review under section 751(a)(2)(B) of the Act must contain the following:

(1) If the person requesting the review is both the exporter and producer of the merchandise, a certification that the person requesting the review did not export subject merchandise to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;

(2) If the person requesting the review is the exporter, but not the producer, of the subject merchandise:

(i) The certification described in paragraph (b)(1) of this section; and

(ii) A certification from the person that produced or supplied the subject merchandise to the person requesting the review that that producer or supplier did not export the subject

merchandise to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;

(3)(i) A certification that, since the investigation was initiated, such exporter or producer has not been affiliated with any exporter or producer who exported the subject merchandise to the United States (or in the case of a regional industry, who exported the subject merchandise for sale in the region concerned) during the period of investigation, including those not individually examined during the investigation;

(ii) In an antidumping proceeding involving imports from a nonmarket economy country, a certification that the export activities of such exporter or producer are not controlled by the central government;

(4) Documentation establishing:

(i) The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot establish the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States;

(ii) The volume of that and subsequent shipments; and

(iii) The date of the first sale to an unaffiliated customer in the United States; and

(5) In the case of a review of a countervailing duty order, a certification that the exporter or producer has informed the government of the exporting country that the government will be required to provide a full response to the Department's questionnaire.

(c) *Deadline for requesting review.* An exporter or producer may request a new shipper review within one year of the date referred to in paragraph (b)(4)(i) of this section.

(d) *Time for new shipper review.* (1) *In general.* The Secretary will initiate a new shipper review under this section in the calendar month immediately following the anniversary month or the semiannual anniversary month if the request for the review is made during the 6-month period ending with the end of the anniversary month or the semiannual anniversary month (whichever is applicable).

(2) *Semiannual anniversary month.* The semiannual anniversary month is the calendar month which is 6 months after the anniversary month.

(3) *Example.* An order is published in January. The anniversary month would be January, and the semiannual anniversary month would be July. If the Secretary received a request for a new shipper review at any time during the period February–July, the Secretary would initiate a new shipper review in August. If the Secretary received a request for a new shipper review at any time during the period August-January, the Secretary would initiate a new shipper review in February.

(e) *Suspension of liquidation; posting bond or security.* When the Secretary initiates a new shipper review under this section, the Secretary will direct the Customs Service to suspend liquidation of any unliquidated entries of the subject merchandise from the relevant exporter or producer, and to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise.

(f) *Rescission of new shipper review.*

(1) *Withdrawal of request for review.* The Secretary may rescind a new shipper review under this section, in whole or in part, if a party that requested a review withdraws its request not later than 60 days after the date of publication of notice of initiation of the requested review.

(2) *No shipments.* The Secretary may rescind a new shipper review, in whole or in part, if the Secretary concludes that:

(i) There have been no entries, exports, or sales, as appropriate, during the normal period of review referred to in paragraph (g) of this section; and

(ii) An expansion of the normal period of review to include entries, exports, or sales would be likely to prevent the completion of the review within the time limits set forth in paragraph (i) of this section.

(3) *Notice of Rescission.* If the Secretary rescinds a new shipper review (in whole or in part), the Secretary will publish in the Federal Register notice of ''Rescission of Antidumping (Countervailing Duty) New Shipper Review'' or, if appropriate, ''Partial Rescission of Antidumping (Countervailing Duty) New Shipper Review.''

(g) *Period of review.* (1) *Antidumping proceeding.* In an antidumping proceeding, a new shipper review under this section normally will cover, as appropriate, entries, exports, or sales during the following time periods:

(i) If the new shipper review was initiated in the month immediately following the anniversary month, the twelve-month period immediately preceding the anniversary month; or

(ii) If the new shipper review was initiated in the month immediately following the semiannual anniversary month, the period of review will be the six-month period immediately preceding the semiannual anniversary month.

(2) *Countervailing duty proceeding.* In a countervailing duty proceeding, the period of review for a new shipper review under this section will be the same period as that specified in § 351.213(e)(2) for an administrative review.

(h) *Procedures.* The Secretary will conduct a new shipper review under this section in accordance with § 351.221.

(i) *Time limits.* (1) *In general.* Unless the time limit is waived under paragraph (j)(3) of this section, the Secretary will issue preliminary results of review (see § 351.221(b)(4)) within 180 days after the date on which the new shipper review was initiated, and final results of review (see § 351.221(b)(5)) within 90 days after the date on which the preliminary results were issued.

(2) *Exception.* If the Secretary concludes that a new shipper review is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days.

(j) *Multiple reviews.* Notwithstanding any other provision of this subpart, if a review (or a request for a review) under § 351.213 (administrative review), § 351.214 (new shipper review), § 351.215 (expedited antidumping review), or § 351.216 (changed circumstances review) covers merchandise of an exporter or producer subject to a review (or to a request for a review) under this section, the Secretary may, after consulting with the exporter or producer:

(1) Rescind, in whole or in part, a review in progress under this subpart;

(2) Decline to initiate, in whole or in part, a review under this subpart; or

(3) Where the requesting party agrees in writing to waive the time limits of paragraph (i) of this section, conduct concurrent reviews, in which case all other provisions of this section will continue to apply with respect to the exporter or producer.

(k) *Expedited reviews in countervailing duty proceedings for noninvestigated exporters. (1) Request for review.* If, in a countervailing duty investigation, the Secretary limited the number of exporters or producers to be individually examined under section 777A(e)(2)(A) of the Act, an exporter that was not selected for individual examination by the Secretary or that

was not accepted as a voluntary respondent (see § 351.204(d)) may request a review under this section. A request must be accompanied by a certification that:

(i) The requester exported the subject merchandise to the United States during the period of investigation; and

(ii) The requester is not affiliated with an exporter or producer that was individually examined in the investigation.

(2) *Deadline for requesting review.* An exporter must submit a request for a review under paragraph (k)(1) of this section within 30 days of the date of publication in the Federal Register of the countervailing duty order.

(3) *Conduct of review.* The Secretary will initiate and conduct a review in accordance with the provisions of this section applicable to new shipper reviews, except that the Secretary will not permit the posting of a bond or security in lieu of a cash deposit under paragraph (e) of this section.

§ 351.215 Expedited antidumping review and security in lieu of estimated duty under section 736(c) of the Act.

(a) *Introduction.* Exporters and producers individually examined in an investigation normally cannot obtain a review of entries until an administrative review is requested. In addition, when an antidumping order is published, importers normally must begin to make a cash deposit of estimated antidumping duties upon the entry of subject merchandise. Section 736(c), however, establishes a special procedure under which exporters or producers may request an expedited review, and bonds, rather than cash deposits, may continue to be posted for a limited period of time if several criteria are satisfied. This section contains rules regarding requests for expedited antidumping reviews and the procedures applicable to such reviews.

(b) *In general.* If the Secretary determines that the criteria of section 736(c)(1) of the Act are satisfied, the Secretary:

(1) May permit, for not more than 90 days after the date of publication of an antidumping order, the posting of a bond or other security instead of the deposit of estimated antidumping duties required under section 736(a)(3) of the Act; and

(2) Will initiate an expedited antidumping review. Before making such a determination, the Secretary will make business proprietary information available, and will provide interested parties with an opportunity to file written comments, in accordance with section 736(c)(4) of the Act.

(c) *Procedures.* The Secretary will conduct an expedited antidumping review under this section in accordance with § 351.221.

§ 351.216 Changed circumstances review under section 751(b) of the Act.

(a) *Introduction.* Section 751(b) of the Act provides for what is known as a ''changed circumstances'' review. This section contains rules regarding requests for changed circumstances reviews and procedures for conducting such reviews.

(b) *Requests for changed circumstances review.* At any time, an interested party may request a changed circumstances review, under section 751(b) of the Act, of an order or a suspended investigation.

(c) *Limitation on changed circumstances review.* Unless the Secretary finds that good cause exists, the Secretary will not review a final determination in an investigation (see section 705(a) or section 735(a) of the Act) or a suspended investigation (see section 704 or section 734 of the Act) less than 24 months after the date of publication of notice of the final determination or the suspension of the investigation.

(d) *Procedures.* If the Secretary decides that changed circumstances sufficient to warrant a review exist, the Secretary will conduct a changed circumstances review in accordance with § 351.221.

(e) *Time limits.* The Secretary will issue final results of review (see § 351.221(b)(5)) within 270 days after the date on which the changed circumstances review is initiated.

§ 351.217 Reviews to implement results of subsidies enforcement proceeding under section 751(g) of the Act.

(a) *Introduction.* Section 751(g) provides a mechanism for incorporating into an ongoing countervailing duty proceeding the results of certain subsidy-related disputes under the WTO Subsidies Agreement. Where the United States, in the WTO, has successfully challenged the ''nonactionable'' (e.g., noncountervailable) status of a foreign subsidy, or where the United States has successfully challenged a prohibited or actionable subsidy, the Secretary may conduct a review to determine the effect, if any, of the successful outcome on an existing countervailing duty order or suspended investigation. This section contains rules regarding the initiation and conduct of reviews under section 751(g).

(b) *Violations of Article 8 of the Subsidies Agreement.* If:

(1) The Secretary receives notice from the Trade Representative of a violation of Article 8 of the Subsidies Agreement;

(2) The Secretary has reason to believe that merchandise subject to an existing countervailing duty order or suspended investigation is benefiting from the subsidy or subsidy program found to have been in violation of Article 8; and

(3) No administrative review is in progress, the Secretary will initiate an Article 8 violation review of the order or suspended investigation to determine whether the subject merchandise benefits from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement.

(c) *Withdrawal of subsidy or imposition of countermeasures.* If the Trade Representative notifies the Secretary that, under Article 4 or Article 7 of the Subsidies Agreement:

(1)(i)(A) The United States has imposed countermeasures; and

(B) Such countermeasures are based on the effects in the United States of imports of merchandise that is the subject of a countervailing duty order; or

(ii) A WTO member country has withdrawn a countervailable subsidy provided with respect to merchandise subject to a countervailing duty order, then

(2) the Secretary will initiate an Article 4/Article 7 review of the order to determine if the amount of estimated duty to be deposited should be adjusted or the order should be revoked.

(d) *Procedures.* The Secretary will conduct an Article 8 violation review or an Article 4/Article 7 review under this section in accordance with § 351.221.

(e) *Expedited reviews.* The Secretary will conduct reviews under this section on an expedited basis.

§ 351.218 Sunset reviews under section 751(c) of the Act.

(a) *Introduction.* The URAA added a new procedure, commonly referred to as ''sunset reviews,'' in section 751(c) of the Act. In general, no later than once every five years, the Secretary must determine whether dumping or countervailable subsidies would be likely to continue or resume if an order were revoked or a suspended investigation were terminated. The Commission must conduct a similar review to determine whether injury would be likely to continue or resume in the absence of an order or suspended investigation. If the determinations under section 751(c) of both the Secretary and the Commission are affirmative, the order (or suspended investigation) remains in place. If either determination is negative, the order will be revoked (or the suspended investigation will be terminated). This

section contains rules regarding the procedures for sunset reviews.

(b) *In general.* The Secretary will conduct a sunset review, under section 751(c) of the Act, of each antidumping and countervailing duty order and suspended investigation, and, under section 752(b) or section 752(c) (whichever is applicable), will determine whether revocation of an antidumping or countervailing duty order or termination of a suspended investigation would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy.

(c) *Notice of initiation of review; early initiation.* No later than 30 days before the fifth anniversary date of an order or suspension of an investigation (see section 751(c)(1) of the Act), the Secretary will publish a notice of initiation of a sunset review (see section 751(c)(2) of the Act). The Secretary may publish a notice of initiation at an earlier date if a domestic interested party demonstrates to the Secretary's satisfaction that an early initiation would promote administrative efficiency. However, if the Secretary determines that the domestic interested party that requested early initiation is a related party or an importer under section 771(4)(B) of the Act and § 351.203(e)(4), the Secretary may decline the request for early initiation.

(d) *Conduct of review.* Upon receipt of responses to the notice of initiation that the Secretary deems adequate to conduct a sunset review, the Secretary will conduct a sunset review in accordance with § 351.221.

(e) *Time limits.* (1) *In general.* Unless the review has been completed under section 751(c)(3) of the Act (no or inadequate response) or, under section 751(c)(4)(B) of the Act, all respondent interested parties waived their participation in the Secretary's sunset review, the Secretary will issue final results of review within 240 days after the date on which the review was initiated. If the Secretary concludes that the sunset review is extraordinarily complicated (see section 751(c)(5)(C) of the Act), the Secretary may extend the period for issuing final results by not more than 90 days.

(2) *Transition orders.* The time limits described in paragraph (e)(1) of this section will not apply to a sunset review of a transition order (see section 751(c)(6) of the Act).

§ 351.219 Reviews of countervailing duty orders in connection with an investigation under section 753 of the Act.

(a) *Introduction.* Section 753 of the Act is a transition provision for countervailing duty orders that were issued under section 303 of the Act without an injury determination by the Commission. Under the Subsidies Agreement, one country may not impose countervailing duties on imports from another WTO Member without first making a determination that such imports have caused injury to a domestic industry. Section 753 provides a mechanism for providing an injury test with respect to those ''no injury'' orders under section 303 that apply to merchandise from WTO Members. This section contains rules regarding (i) requests for section 753 investigations by a domestic interested party; and (ii) the procedures that the Department will follow in reviewing a countervailing duty order and providing the Commission with advice regarding the amount and nature of a countervailable subsidy.

(b) *Notification of domestic interested parties.* The Secretary will notify directly domestic interested parties as soon as possible after the opportunity arises for requesting an investigation by the Commission under section 753 of the Act.

(c) *Initiation and conduct of section 753 review.* Where the Secretary deems it necessary in order to provide to the Commission information on the amount or nature of a countervailable subsidy (see section 753(b)(2) of the Act), the Secretary may initiate a section 753 review of the countervailing duty order in question. The Secretary will conduct a section 753 review in accordance with § 351.221.

§ 351.220 Countervailing duty review at the direction of the President under section 762 of the Act.

At the direction of the President or a designee, the Secretary will conduct a review under section 762(a)(1) of the Act to determine if a countervailable subsidy is being provided with respect to merchandise subject to an understanding or other kind of quantitative restriction agreement accepted under section 704(a)(2) or section 704(c)(3) of the Act. The Secretary will conduct a review under this section in accordance with § 351.221. If the Secretary's final results of review under this section and the Commission's final results of review under section 762(a)(2) of the Act are both affirmative, the Secretary will issue a countervailing duty order and order suspension of liquidation in accordance with section 762(b) of the Act.

§ 351.221 Review procedures.

(a) *Introduction.* The procedures for reviews are similar to those followed in investigations. This section details the procedures applicable to reviews in general, as well as procedures that are unique to certain types of reviews.

(b) *In general.* After receipt of a timely request for a review, or on the Secretary's own initiative when appropriate, the Secretary will:

(1) Promptly publish in the Federal Register notice of initiation of the review;

(2) Before or after publication of notice of initiation of the review, send to appropriate interested parties or other persons (or, if appropriate, a sample of interested parties or other persons) questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification under § 351.307;

(4) Issue preliminary results of review, based on the available information, and publish in the Federal Register notice of the preliminary results of review that include:

(i) The rates determined, if the review involved the determination of rates; and

(ii) An invitation for argument consistent with § 351.309;

(5) Issue final results of review and publish in the Federal Register notice of the final results of review that include the rates determined, if the review involved the determination of rates;

(6) If the type of review in question involves a determination as to the amount of duties to be assessed, promptly after publication of the notice of final results instruct the Customs Service to assess antidumping duties or countervailing duties (whichever is applicable) on the subject merchandise covered by the review, except as otherwise provided in § 351.106(c) with respect to de minimis duties; and

(7) If the review involves a revision to the cash deposit rates for estimated antidumping duties or countervailing duties, instruct the Customs Service to collect cash deposits at the revised rates on future entries.

(c) *Special rules.* (1) *Administrative reviews and new shipper reviews.* In an administrative review under section 751(a)(1) of the Act and § 351.213 and a new shipper review under section 751(a)(2)(B) of the Act and § 351.214 the Secretary:

(i) Will publish the notice of initiation of the review no later than the last day of the month following the anniversary month or the semiannual anniversary month (as the case may be); and

(ii) Normally will send questionnaires no later than 30 days after the date of publication of the notice of initiation.

(2) *Expedited antidumping review.* In an expedited antidumping review under section 736(c) of the Act and § 351.215, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309, and a statement that the Secretary is permitting the posting of a bond or other security instead of a cash deposit of estimated antidumping duties;

(ii) Will instruct the Customs Service to accept, instead of the cash deposit of estimated antidumping duties under section 736(a)(3) of the Act, a bond for each entry of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the investigation and through the date not later than 90 days after the date of publication of the order; and

(iii) Will not issue preliminary results of review.

(3) *Changed circumstances review.* In a changed circumstances review under section 751(b) of the Act and § 351.216, the Secretary:

(i) Will include in the preliminary results of review and the final results of review a description of any action the Secretary proposed based on the preliminary or final results; and

(ii) May combine the notice of initiation of the review and the preliminary results of review in a single notice if the Secretary concludes that expedited action is warranted.

(4) *Article 8 Violation review and Article 4/Article 7 review.* In an Article 8 Violation review or an Article 4/Article 7 review under section 751(g) of the Act and § 351.217, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309 and will notify all parties to the proceeding at the time the Secretary initiates the review;

(ii) Will not issue preliminary results of review; and

(iii) In the final results of review will indicate the amount, if any, by which the estimated duty to be deposited should be adjusted, and, in an Article 4/Article 7 review, any action, including revocation, that the Secretary will take based on the final results.

(5) *Sunset review.* In a sunset review under section 751(c) of the Act and § 351.218:

(i) The notice of initiation of the review will contain a request for the information described in section 751(c)(2) of the Act; and

(ii) The Secretary, without issuing preliminary results of review, may issue final results of review under paragraphs (3) or (4) of subsection 751(c) of the Act if the conditions of those paragraphs are satisfied.

(6) *Section 753 review.* In a section 753 review under section 753 of the Act and § 351.219, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309, and will notify all parties to the proceeding at the time the Secretary initiates the review; and

(ii) May decline to issue preliminary results of review.

(7) *Countervailing duty review at the direction of the President.* In a countervailing duty review at the direction of the President under section 762 of the Act and § 351.220, the Secretary:

(i) Will include in the notice of initiation of the review a description of the merchandise, the period under review, and a summary of the available information which, if accurate, would support the imposition of countervailing duties;

(ii) Notify the Commission of the initiation of the review and the preliminary results of review;

(iii) Include in the preliminary results of review the countervailable subsidy, if any, during the period of review and a description of official changes in the subsidy programs made by the government of the affected country that affect the estimated countervailable subsidy; and

(iv) Include in the final results of review the counter vailable subsidy, if any, during the period of review and a description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the estimated countervailable subsidy.

§ 351.222 Revocation of orders; termination of suspended investigations.

(a) *Introduction.* ''Revocation'' is a term of art that refers to the end of an antidumping or countervailing proceeding in which an order has been issued. ''Termination'' is the companion term for the end of a proceeding in which the investigation was suspended due to the acceptance of a suspension agreement. Generally, a revocation or termination may occur only after the Department or the Commission have conducted one or more reviews under section 751 of the Act. This section contains rules regarding requirements for a revocation or termination; and procedures that the Department will follow in determining whether to revoke an order or terminate a suspended investigation.

(b) *Revocation or termination based on absence of dumping.* (1) The Secretary may revoke an antidumping order or terminate a suspended antidumping investigation if the Secretary concludes that:

(i) All exporters and producers covered at the time of revocation by the order or the suspension agreement have sold the subject merchandise at not less than normal value for a period of at least three consecutive years; and

(ii) It is not likely that those persons will in the future sell the subject merchandise at less than normal value.

(2) The Secretary may revoke an antidumping order in part if the Secretary concludes that:

(i) One or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years;

(ii) It is not likely that those persons will in the future sell the subject merchandise at less than normal value; and

(iii) For any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than normal value, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value.

(c) *Revocation or termination based on absence of countervailable subsidy.* (1) The Secretary may revoke a countervailing duty order or terminate a suspended countervailing duty investigation if the Secretary concludes that:

(i) The government of the affected country has eliminated all countervailable subsidies on the subject merchandise by abolishing for the subject merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable;

(ii) It is not likely that the government of the affected country will in the future reinstate for the subject merchandise those programs or substitute other countervailable programs; and

(iii) Exporters and producers of the subject merchandise are not continuing to receive any net countervailable subsidy from an abolished program referred to in paragraph (c)(1)(i) of this section.

(2) The Secretary may revoke a countervailing duty order or terminate a suspended countervailing duty investigation if the Secretary concludes that:

(i) All exporters and producers covered at the time of revocation by the

order or the suspension agreement have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years; and

(ii) It is not likely that those persons will in the future apply for or receive any net countervailable subsidy on the subject merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs.

(3) The Secretary may revoke a countervailing duty order in part if the Secretary concludes that:

(i) One or more exporters or producers covered by the order have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years;

(ii) It is not likely that those persons will in the future apply for or receive any net countervailable subsidy on the subject merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs; and

(iii) Except for exporters or producers that the Secretary previously has determined have not received any net countervailable subsidy on the subject merchandise, the exporters or producers agree in writing to their immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, has received any net countervailable subsidy on the subject merchandise.

(d) *Treatment of unreviewed intervening years.* (1) *In general.* The Secretary will not revoke an order or terminate a suspended investigation under paragraphs (b) or (c) of this section unless the Secretary has conducted a review under this subpart of the first and third (or fifth) years of the three- and five-year consecutive time periods referred to in those paragraphs. The Secretary need not have conducted a review of an intervening year (see paragraph (d)(2) of this section). However, except in the case of a revocation or termination under paragraph (c)(1) of this section (government abolition of countervailable subsidy programs), before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply.

(2) *Intervening year.* ''Intervening year'' means:

(i) The second year if revocation or termination is conditioned on three consecutive years of no sales at less than normal value or countervailable subsidies; or

(ii) The second, third, or fourth year if revocation or termination is conditioned on five consecutive years of no countervailable subsidies.

(e) *Request for revocation or termination. (1) Antidumping proceeding.* During the third and subsequent annual anniversary months of the publication of an antidumping order or suspension of an antidumping investigation, an exporter or producer may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (b) of this section with regard to that person if the person submits with the request:

(i) The person's certification that the person sold the subject merchandise at not less than normal value during the period of review described in § 351.213(e)(1), and that in the future the person will not sell the merchandise at less than normal value;

(ii) The person's certification that, during each of the three consecutive years referred to in paragraph (b) of this section, the person sold the subject merchandise to the United States in commercial quantities; and

(iii) If applicable, the agreement regarding reinstatement in the order or suspended investigation described in paragraph (b)(2)(iii) of this section.

(2) *Countervailing duty proceeding.*

(i) During the third and subsequent annual anniversary months of the publication of a countervailing duty order or suspension of a countervailing duty investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (c)(1) of this section if the government submits with the request its certification that it has satisfied, during the period of review described in § 351.213(e)(2), the requirements of paragraph (c)(1)(i) of this section regarding the abolition of countervailable subsidy programs, and that it will not reinstate for the subject merchandise those programs or substitute other countervailable subsidy programs;

(ii) During the fifth and subsequent annual anniversary months of the publication of a countervailing duty order or suspended countervailing duty investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (c)(2) of this section if the government submits with the request:

(A) Certifications for all exporters and producers covered by the order or suspension agreement that they have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years (see paragraph (c)(2)(i) of this section);

(B) Those exporters' and producers' certifications that they will not apply for or receive any net countervailable subsidy on the subject merchandise from any program the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs (see paragraph (c)(2)(ii) of this section); and

(C) A certification from each exporter or producer that, during each of the five consecutive years referred to in paragraph (c)(2) of this section, that person sold the subject merchandise to the United States in commercial quantities; or

(iii) During the fifth and subsequent annual anniversary months of the publication of a countervailing duty order, an exporter or producer may request in writing that the Secretary revoke the order with regard to that person if the person submits with the request:

(A) A certification that the person has not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years (see paragraph (c)(3)(i) of this section), including calculations demonstrating the basis for the conclusion that the person received zero or de minimis net countervailable subsidies during the review period of the administrative review in connection with which the person has submitted the request for revocation;

(B) A certification that the person will not apply for or receive any net countervailable subsidy on the subject merchandise from any program the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs (see paragraph (c)(3)(ii) of this section);

(C) The person's certification that, during each of the five consecutive years referred to in paragraph (c)(3) of this section, the person sold the subject merchandise to the United States in commercial quantities; and

(D) The agreement described in paragraph (c)(3)(iii) of this section (reinstatement in order).

(f) *Procedures.* (1) Upon receipt of a timely request for revocation or

termination under paragraph (e) of this section, the Secretary will consider the request as including a request for an administrative review and will initiate and conduct a review under § 351.213.

(2) In addition to the requirements of § 351.221 regarding the conduct of an administrative review, the Secretary will:

(i) Publish with the notice of initiation under § 351.221(b)(1), notice of ''Request for Revocation of Order (in part)'' or ''Request for Termination of Suspended Investigation'' (whichever is applicable);

(ii) Conduct a verification under § 351.307;

(iii) Include in the preliminary results of review under § 351.221(b)(4) the Secretary's decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met;

(iv) If the Secretary decides that there is a reasonable basis to believe that the requirements for revocation or termination are met, publish with the notice of preliminary results of review under § 351.221(b)(4) notice of ''Intent to Revoke Order (in Part)'' or ''Intent to Terminate Suspended Investigation'' (whichever is applicable);

(v) Include in the final results of review under § 351.221(b)(5) the Secretary's final decision whether the requirements for revocation or termination are met; and

(vi) If the Secretary determines that the requirements for revocation or termination are met, publish with the notice of final results of review under § 351.221(b)(5) notice of ''Revocation of Order (in Part)'' or ''Termination of Suspended Investigation'' (whichever is applicable).

(3) If the Secretary revokes an order in whole or in part, the Secretary will order the suspension of liquidation terminated for the merchandise covered by the revocation on the first day after the period under review, and will instruct the Customs Service to release any cash deposit or bond.

(g) *Revocation or termination based on changed circumstances.* (1) The Secretary may revoke an order, in whole or in part, or terminate a suspended investigation if the Secretary concludes that:

(i) Producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) or suspended investigation pertains have expressed a lack of interest in the order, in whole or in part, or suspended investigation (see section 782(h) of the Act); or

(ii) Other changed circumstances sufficient to warrant revocation or termination exist.

(2) If at any time the Secretary concludes from the available information that changed circumstances sufficient to warrant revocation or termination may exist, the Secretary will conduct a changed circumstances review under § 351.216.

(3) In addition to the requirements of § 351.221, the Secretary will:

(i) Publish with the notice of initiation (see § 353.221(b)(1), notice of ''Consideration of Revocation of Order (in Part)'' or ''Consideration of Termination of Suspended Investigation'' (whichever is applicable);

(ii) If the Secretary's conclusion regarding the possible existence of changed circumstances (see paragraph (g)(2) of this section), is not based on a request, the Secretary, not later than the date of publication of the notice of ''Consideration of Revocation of Order (in Part)'' or ''Consideration of Termination of Suspended Investigation'' (whichever is applicable) (see paragraph (g)(3)(i) of this section), will serve written notice of the consideration of revocation or termination on each interested party listed on the Department's service list and on any other person that the Secretary has reason to believe is a domestic interested party;

(iii) Conduct a verification, if appropriate, under § 351.307;

(iv) Include in the preliminary results of review, under § 351.221(b)(4), the Secretary's decision whether there is a reasonable basis to believe that changed circumstances warrant revocation or termination;

(v) If the Secretary's preliminary decision is that changed circumstances warrant revocation or termination, publish with the notice of preliminary results of review, under § 351.221(b)(4), notice of ''Intent to Revoke Order (in Part)'' or ''Intent to Terminate Suspended Investigation'' (whichever is applicable);

(vi) Include in the final results of review, under § 351.221(b)(5), the Secretary's final decision whether changed circumstances warrant revocation or termination; and

(vii) If the Secretary determines that changed circumstances warrant revocation or termination, publish with the notice of final results of review, under § 351.221(b)(5), notice of ''Revocation of Order (in Part)'' or ''Termination of Suspended Investigation'' (whichever is applicable).

(4) If the Secretary revokes an order, in whole or in part, under paragraph (g) of this section, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the effective date of the notice of revocation, and will instruct the Customs Service to release any cash deposit or bond.

(h) *Revocation or termination based on injury reconsideration.* If the Commission determines in a changed circumstances review under section 751(b)(2) of the Act that the revocation of an order or termination of a suspended investigation is not likely to lead to continuation or recurrence of material injury, the Secretary will revoke, in whole or in part, the order or terminate the suspended investigation, and will publish in the Federal Register notice of ''Revocation of Order (in Part)'' or ''Termination of Suspended Investigation'' (whichever is applicable).

(i) *Revocation or termination based on sunset review. (1) In general.* In the case of a sunset review under § 351.218, the Secretary will revoke an order or terminate a suspended investigation, unless:

(i) The Secretary makes a determination that revocation or termination would be likely to lead to continuation or recurrence of a countervailable subsidy or dumping (see section 752(b) and section 752(c) of the Act); and

(ii) The Commission makes a determination that revocation or termination would be likely to lead to continuation or recurrence of material injury (see section 752(a) of the Act).

(2) *Exception for transition orders.* Before January 1, 2000, the Secretary will not revoke a transition order (see section 751(c)(6) of the Act) as the result of a sunset review under § 351.218.

(j) *Revocation of countervailing duty order based on Commission negative determination under section 753 of the Act.* Upon being notified by the Commission that:

(1) The Commission has determined that an industry in the United States is not likely to be materially injured if the countervailing duty order in question is revoked (see section 753(a)(1) of the Act); or

(2) A domestic interested party did not make a timely request for an investigation under section 753(a) of the Act (see section 753(a)(3) of the Act), the Secretary will revoke the countervailing duty order in question, and will order the refund, with interest, of any estimated countervailing duties collected during the period liquidation was suspended under section 753(a)(4) of the Act.

(k) *Revocation based on Article 4/ Article 7 review.* (1) *In general.* The Secretary may revoke a countervailing

duty order, in whole or in part, following an Article 4/Article 7 review under § 351.217(c), due to the imposition of countermeasures by the United States or the withdrawal of a countervailable subsidy by a WTO member country (see section 751(g)(2) of the Act).

(2) *Additional Requirements.* In addition to the requirements of § 351.221, if the Secretary determines to revoke an order as the result of an Article 4/Article 7 review, the Secretary will:

(i) Conduct a verification, if appropriate, under § 351.307;

(ii) Include in the final results of review, under § 351.221(b)(5), the Secretary's final decision whether the order should be revoked;

(iii) If the Secretary's final decision is that the order should be revoked:

(A) Determine the effective date of the revocation;

(B) Publish with the notice of final results of review, under § 351.221(b)(5), a notice of ''Revocation of Order (in Part),'' that will include the effective date of the revocation; and

(C) Order any suspension of liquidation ended for merchandise covered by the revocation that was entered on or after the effective date of the revocation, and instruct the Customs Service to release any cash deposit or bond.

(l) *Revocation under section 129.* The Secretary may revoke an order under section 129 of the URAA (implementation of WTO dispute settlement).

(m) *Transition rule.* In the case of time periods that, under section 291(a)(2) of the URAA, are subject to review under the provisions of the Act prior to its amendment by the URAA, and for purposes of determining whether the three- or five-year requirements of paragraphs (b) and (c) of this section are satisfied, the following rules will apply:

(1) *Antidumping proceedings.* The Secretary will consider sales at not less than foreign market value to be equivalent to sales at not less than normal value.

(2) *Countervailing duty proceedings.* The Secretary will consider the absence of a subsidy, as defined in section 771(5) of the Act prior to its amendment by the URAA, to be equivalent to the absence of a countervailable subsidy, as defined in section 771(5) of the Act, as amended by the URAA.

(n) *Cross-reference.* For the treatment in a subsequent investigation of business proprietary information submitted to the Secretary in connection with a changed circumstances review under § 351.216 or a sunset review under § 351.218 that results in the revocation of an order (or termination of a suspended investigation) see section 777(b)(3) of the Act.

§ 351.223 Procedures for initiation of downstream product monitoring.

(a) *Introduction.* Section 780 of the Act establishes a mechanism for monitoring imports of ''downstream products.'' In general, section 780 is aimed at situations where, following the issuance of an antidumping or countervailing duty order on a product that is used as a component in another product, exports to the United States of that other (or ''downstream'') product increase. Although the Department is responsible for determining whether trade in the downstream product should be monitored, the Commission is responsible for conducting the actual monitoring. The Commission must report the results of its monitoring to the Department, and the Department must consider the reports in determining whether to self-initiate an antidumping or countervailing duty investigation on the downstream product. This section contains rules regarding applications for the initiation of downstream product monitoring and decisions regarding such applications.

(b) *Contents of application.* An application to designate a downstream product for monitoring under section 780 of the Act must contain the following information, to the extent reasonably available to the applicant:

(1) The name and address of the person requesting the monitoring and a description of the article it produces which is the basis for filing its application;

(2) A detailed description of the downstream product in question;

(3) A detailed description of the component product that is incorporated into the downstream product, including the value of the component part in relation to the value of the downstream product, and the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product;

(4) The name of the country of production of both the downstream and component products and the name of any intermediate country from which the merchandise is imported;

(5) The name and address of all known producers of component parts and downstream products in the relevant countries and a detailed description of any relationship between such producers;

(6) Whether the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement within the meaning of section 804 of the Trade and Tariff Act of 1984;

(7) A list of all antidumping or countervailing duty investigations that have been suspended, or antidumping or countervailing duty orders that have been issued, on merchandise that is related to the component part and that is manufactured in the same foreign country in which the component part is manufactured;

(8) A list of all antidumping or countervailing duty investigations that have been suspended, or antidumping or countervailing duty orders that have been issued, on merchandise that is manufactured or exported by the manufacturer or exporter of the component part and that is similar in description and use to the component part; and

(9) The reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component part into increased production and exportation to the United States of the downstream product.

(c) *Determination of sufficiency of application.* Within 14 days after an application is filed under paragraph (b) of this section, the Secretary will rule on the sufficiency of the application by making the determinations described in section 780(a)(2) of the Act.

(d) *Notice of Determination.* The Secretary will publish in the Federal Register notice of each affirmative or negative ''monitoring'' determination made under section 780(a)(2) of the Act, and if the determination under section 780(a)(2)(A) of the Act and a determination made under any clause of section 780(a)(2)(B) of the Act are affirmative, will transmit to the Commission a copy of the determination and the application. The Secretary will make available to the Commission, and to its employees directly involved in the monitoring, the information upon which the Secretary based the initiation.

§ 351.224 Disclosure of calculations and procedures for the correction of ministerial errors.

(a) *Introduction.* In the interests of transparency, the Department has long had a practice of providing parties with the details of its antidumping and countervailing duty calculations. This practice has come to be referred to as a ''disclosure.'' This section contains rules relating to requests for disclosure and procedures for correcting ministerial errors.

(b) *Disclosure.* The Secretary will disclose to a party to the proceeding

calculations performed, if any, in connection with a preliminary determination under section 703(b) or section 733(b) of the Act, a final determination under section 705(a) or section 735(a) of the Act, and a final results of a review under section 736(c), section 751, or section 753 of the Act, normally within five days after the date of any public announcement or, if there is no public announcement of, within five days after the date of publication of, the preliminary determination, final determination, or final results of review (whichever is applicable). The Secretary will disclose to a party to the proceeding calculation performed, if any, in connection with a preliminary results of review under section 751 or section 753 of the Act, normally not later than ten days after the date of the public announcement of, or, if there is no public announcement, within five days after the date of publication of, the preliminary results of review.

(c) *Comments regarding ministerial errors.* (1) *In general.* A party to the proceeding to whom the Secretary has disclosed calculations performed in connection with a preliminary determination may submit comments concerning a significant ministerial error in such calculations. A party to the proceeding to whom the Secretary has disclosed calculations performed in connection with a final determination or the final results of a review may submit comments concerning any ministerial error in such calculations. The Secretary will not consider comments concerning ministerial errors made in the preliminary results of a review.

(2) *Time limits for submitting comments.* A party to the proceeding must file comments concerning ministerial errors within five days after the earlier of (i) the date on which the Secretary released disclosure documents to that party, or (ii) the date on which the Secretary held a disclosure meeting with that party.

(3) *Replies to comments.* Replies to comments submitted under paragraph (c)(1) of this section must be filed within five days after the date on which the comments were filed with the Secretary. The Secretary will not consider replies to comments submitted in connection with a preliminary determination.

(4) *Extensions.* A party to the proceeding may request an extension of the time limit for filing comments concerning a ministerial error in a final determination or final results of review under section 351.302(c) within three days after the date of any public announcement, or, if there is no public announcement, within five days after the date of publication of the final determination or final results of review, as applicable. The Secretary will not extend the time limit for filing comments concerning a significant ministerial error in a preliminary determination.

(d) *Contents of comments and replies.* Comments filed under paragraph (c)(1) of this section must explain the alleged ministerial error by reference to applicable evidence in the official record, and must present what, in the party's view, is the appropriate correction. In addition, comments concerning a preliminary determination must demonstrate how the alleged ministerial error is significant (see paragraph (g) of this section, by illustrating the effect on individual weighted-average dumping margin or countervailable subsidy rate, the all-others rate, or the country-wide subsidy rate (whichever is applicable). Replies to any comments must be limited to issues raised in such comments.

(e) *Corrections.* The Secretary will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination, or correct any ministerial error by amending the final determination or the final results of review (whichever is applicable). Where practicable, the Secretary will announce publicly the issuance of a correction notice, and normally will do so within 30 days after the date of public announcement, or, if there is no public announcement, within 30 days after the date of publication, of the preliminary determination, final determination, or final results of review (whichever is applicable). In addition, the Secretary will publish notice of such corrections in the Federal Register. A correction notice will not alter the anniversary month of an order or suspended investigation for purposes of requesting an administrative review (see § 351.213) or a new shipper review (see § 351.214) or initiating a sunset review (see § 351.218).

(f) *Definition of ''ministerial error.''* Under this section, ministerial error means an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.

(g) *Definition of ''significant ministerial error.''* Under this section, significant ministerial error means a ministerial error (see paragraph (f) of this section), the correction of which, either singly or in combination with other errors:

(1) Would result in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin or the countervailable subsidy rate (whichever is applicable) calculated in the original (erroneous) preliminary determination; or

(2) Would result in a difference between a weighted-average dumping margin or countervailable subsidy rate (whichever is applicable) of zero (or de minimis) and a weighted-average dumping margin or countervailable subsidy rate of greater than de minimis, or vice versa.

§ 351.225 Scope ruling.

(a) *Introduction.* Issues arise as to whether a particular product is included within the scope of an antidumping or countervailing duty order or a suspended investigation. Such issues can arise because the descriptions of subject merchandise contained in the Department's determinations must be written in general terms. At other times, a domestic interested party may allege that changes to an imported product or the place where the imported product is assembled constitutes circumvention under section 781 of the Act. When such issues arise, the Department issues ''scope rulings'' that clarify the scope of an order or suspended investigation with respect to particular products. This section contains rules regarding scope rulings, requests for scope rulings, procedures for scope inquiries, and standards used in determining whether a product is within the scope of an order or suspended investigation.

(b) *Self-initiation.* If the Secretary determines from available information that an inquiry is warranted to determine whether a product is included within the scope of an antidumping or countervailing duty order or a suspended investigation, the Secretary will initiate an inquiry, and will notify all parties on the Department's scope service list of its initiation of a scope inquiry.

(c) *By application.* Any interested party may apply for a ruling as to whether a particular product is within the scope of an order or a suspended investigation. The application must be served upon all parties on the scope service list described in paragraph (n) of this section, and must contain the following, to the extent reasonably available to the interested party:

(1) A detailed description of the product, including its technical characteristics and uses, and its current U.S. Tariff Classification number;

(2) A statement of the interested party's position as to whether the

product is within the scope of an order or a suspended investigation, including:

(i) A summary of the reasons for this conclusion,

(ii) Citations to any applicable statutory authority, and

(iii) Any factual information supporting this position, including excerpts from portions of the Secretary's or the Commission's investigation, and relevant prior scope rulings.

(d) *Ruling based upon the application.* If the Secretary can determine, based solely upon the application and the descriptions of the merchandise referred to in paragraph (k)(1) of this section, whether a product is included within the scope of an order or a suspended investigation, the Secretary will issue a final ruling as to whether the product is included within the order or suspended investigation. The Secretary will notify all interested parties on the Department's scope service list (see paragraph (n) of this section) of the final ruling.

(e) *Ruling where further inquiry is warranted.* If the Secretary finds that the issue of whether a product is included within the scope of an order or a suspended investigation cannot be determined based solely upon the application and the descriptions of the merchandise referred to in paragraph (k)(1) of this section, the Secretary will notify by mail all parties on the Department's scope service list of the initiation of a scope inquiry.

(f) *Notice and procedure.* (1) Notice of the initiation of a scope inquiry issued under paragraph (b) or (e) of this section will include:

(i) A description of the product that is the subject of the scope inquiry; and

(ii) An explanation of the reasons for the Secretary's decision to initiate a scope inquiry;

(iii) A schedule for submission of comments that normally will allow interested parties 20 days in which to provide comments on, and supporting factual information relating to, the inquiry, and 10 days in which to provide any rebuttal to such comments.

(2) The Secretary may issue questionnaires and verify submissions received, where appropriate.

(3) Whenever the Secretary finds that a scope inquiry presents an issue of significant difficulty, the Secretary will issue a preliminary scope ruling, based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the product subject to a scope inquiry is included within the order or suspended investigation. The Secretary will notify all parties on the Department's scope service list (see paragraph (n) of this section) of the preliminary scope ruling, and will invite comment. Unless otherwise specified, interested parties will have within twenty days from the date of receipt of the notification in which to submit comments, and ten days thereafter in which to submit rebuttal comments.

(4) The Secretary will issue a final ruling as to whether the product which is the subject of the scope inquiry is included within the order or suspended investigation, including an explanation of the factual and legal conclusions on which the final ruling is based. The Secretary will notify all parties on the Department's scope service list (see paragraph (n) of this section) of the final scope ruling.

(5) The Secretary will issue a final ruling under paragraph (k) of this section (other scope rulings) normally within 120 days of the initiation of the inquiry under this section. The Secretary will issue a final ruling under paragraph (g), (h), (i), or (j) of this section (circumvention rulings under section 781 of the Act) normally within 300 days from the date of the initiation of the scope inquiry.

(6) When an administrative review under § 351.213, a new shipper review under § 351.214, or an expedited antidumping review under § 351.215 is in progress at the time the Secretary provides notice of the initiation of a scope inquiry (see paragraph (e)(1) of this section), the Secretary may conduct the scope inquiry in conjunction with that review.

(7)(i) The Secretary will notify the Commission in writing of the proposed inclusion of products in an order prior to issuing a final ruling under paragraph (f)(4) of this section based on a determination under:

(A) Section 781(a) of the Act with respect to merchandise completed or assembled in the United States (other than minor completion or assembly);

(B) Section 781(b) of the Act with respect to merchandise completed or assembled in other foreign countries; or

(C) Section 781(d) of the Act with respect to later-developed products which incorporate a significant technological advance or significant alteration of an earlier product.

(ii) If the Secretary notifies the Commission under paragraph (f)(7)(i) of this section, upon the written request of the Commission, the Secretary will consult with the Commission regarding the proposed inclusion, and any such consultation will be completed within 15 days after the date of such request. If, after consultation, the Commission believes that a significant injury issue is presented by the proposed inclusion of a product within an order, the Commission may provide written advice to the Secretary as to whether the inclusion would be inconsistent with the affirmative injury determination of the Commission on which the order is based.

(g) *Products completed or assembled in the United States.* Under section 781(a) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order imported parts or components referred to in section 781(a)(1)(B) of the Act that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect. In making this determination, the Secretary will not consider any single factor of section 781(a)(2) of the Act to be controlling. In determining the value of parts or components purchased from an affiliated person under section 781(a)(1)(D) of the Act, or of processing performed by an affiliated person under section 781(a)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part of component under section 773(f)(3) of the Act.

(h) *Products completed or assembled in other foreign countries.* Under section 781(b) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order, at any time such order is in effect, imported merchandise completed or assembled in a foreign country other than the country to which the order applies. In making this determination, the Secretary will not consider any single factor of section 781(b)(2) of the Act to be controlling. In determining the value of parts or components purchased from an affiliated person under section 781(b)(1)(D) of the Act, or of processing performed by an affiliated person under section 781(b)(2)(E) of the Act, the Secretary will apply the major input rule under section 773(f)(3) of the Act.

(i) *Minor alterations of merchandise.* Under section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles altered in form or appearance in minor respects.

(j) *Later-developed merchandise.* In determining whether later-developed merchandise is within the scope of an antidumping or countervailing duty order, the Secretary will apply section 781(d) of the Act.

(k) *Other scope determinations.* With respect to those scope determinations that are not covered under paragraphs (g) through (j) of this section, in considering whether a particular product is included within the scope of

an order or a suspended investigation, the Secretary will take into account the following:

(1) The descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission.

(2) When the above criteria are not dispositive, the Secretary will further consider:

(i) The physical characteristics of the product;

(ii) The expectations of the ultimate purchasers;

(iii) The ultimate use of the product;

(iv) The channels of trade in which the product is sold; and

(v) The manner in which the product is advertised and displayed.

(l) *Suspension of liquidation.* (1) When the Secretary conducts a scope inquiry under paragraph (b) or (e) of this section, and the product in question is already subject to suspension of liquidation, that suspension of liquidation will be continued, pending a preliminary or a final scope ruling, at the cash deposit rate that would apply if the product were ruled to be included within the scope of the order.

(2) If the Secretary issues a preliminary scope ruling under paragraph (f)(3) of this section to the effect that the product in question is included within the scope of the order, any suspension of liquidation described in paragraph (l)(1) of this section will continue. If liquidation has not been suspended, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of the preliminary scope ruling. If the Secretary issues a preliminary scope ruling to the effect that the product in question is not included within the scope of the order, the Secretary will order any suspension of liquidation on the product ended, and will instruct the Customs Service to refund any cash deposits or release any bonds relating to that product.

(3) If the Secretary issues a final scope ruling, under either paragraph (d) or (f)(4) of this section, to the effect that the product in question is included within the scope of the order, any suspension of liquidation under paragraph (l)(1) or (l)(2) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of the final scope ruling. If the Secretary's final scope ruling is to the effect that the product in question is not included within the scope of the order, the Secretary will order any suspension of liquidation on the subject product ended and will instruct the Customs Service to refund any cash deposits or release any bonds relating to this product.

(4) If, within 90 days of the initiation of a review of an order or a suspended investigation under this subpart, the Secretary issues a final ruling that a product is included within the scope of the order or suspended investigation that is the subject of the review, the Secretary, where practicable, will include sales of that product for purposes of the review and will seek information regarding such sales. If the Secretary issues a final ruling after 90 days of the initiation of the review, the Secretary may consider sales of the product for purposes of the review on the basis of non-adverse facts available. However, notwithstanding the pendency of a scope inquiry, if the Secretary considers it appropriate, the Secretary may request information concerning the product that is the subject of the scope inquiry for purposes of a review under this subpart.

(m) *Orders covering identical products.* Except for a scope inquiry and a scope ruling that involves section 781(a) or section 781(b) of the Act (assembly of parts or components in the United States or in a third country), if more than one order or suspended investigation cover the same subject merchandise, and if the Secretary considers it appropriate, the Secretary may conduct a single inquiry and issue a single scope ruling that applies to all such orders or suspended investigations.

(n) *Service of applications; scope service list.* The requirements of § 351.303(f) apply to this section, except that an application for a scope ruling must be served on all parties on the Department's scope service list. For purposes of this section, the ''scope service list'' will include all parties that have participated in any segment of the proceeding. If an application for a scope ruling in one proceeding results in a single inquiry that will apply to another proceeding (see paragraph (m) of this section), the Secretary will notify parties on the scope service list of the other proceeding of the application for a scope ruling.

(o) *Publication of list of scope rulings.* On a quarterly basis, the Secretary will publish in the Federal Register a list of scope rulings issued within the last three months. This list will include the case name, reference number, and a brief description of the ruling.

Subpart C—Information and Argument

§ 351.301 Time limits for submission of factual information.

(a) *Introduction.* The Department obtains most of its factual information in antidumping and countervailing duty proceedings from submissions made by interested parties during the course of the proceeding. This section sets forth the time limits for submitting such factual information, including information in questionnaire responses, publicly available information to value factors in nonmarket economy cases, allegations concerning market viability, allegations of sales at prices below the cost of production, countervailable subsidy allegations, and upstream subsidy allegations. Section 351.302 sets forth the procedures for requesting an extension of such time limits. Section 351.303 contains the procedural rules regarding filing, format, translation, service, and certification of documents.

(b) *Time limits in general.* Except as provided in paragraphs (c) and (d) of this section and § 351.302, a submission of factual information is due no later than:

(1) For a final determination in a countervailing duty investigation or an antidumping investigation, seven days before the date on which the verification of any person is scheduled to commence, except that factual information requested by the verifying officials from a person will be due no later than seven days after the date on which the verification of that person is completed;

(2) For the final results of an administrative review, 140 days after the last day of the anniversary month, except that factual information requested by the verifying officials from a person will be due no later than seven days after the date on which the verification of that person is completed;

(3) For the final results of a changed circumstances review, sunset review, or section 762 review, 140 days after the date of publication of notice of initiation of the review, except that factual information requested by the verifying officials from a person will be due no later than seven days after the date on which the verification of that person is completed;

(4) For the final results of a new shipper review, 100 days after the date of publication of notice of initiation of the review, except that factual

information requested by the verifying officials from a person will be due no later than seven days after the date on which the verification of that person is completed; and

(5) For the final results of an expedited antidumping review, Article 8 violation review, Article 4/Article 7 review, or section 753 review, a date specified by the Secretary.

(c) *Time limits for certain submissions.* (1) *Rebuttal, clarification, or correction of factual information.* Any interested party may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party at any time prior to the deadline provided in this section for submission of such factual information or, if later, 10 days after the date such factual information is served on the interested party or, if appropriate, made available under APO to the authorized applicant.

(2) *Questionnaire responses and other submissions on request.* (i) Notwithstanding paragraph (b) of this section, the Secretary may request any person to submit factual information at any time during a proceeding.

(ii) In the Secretary's written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify: the time limit for the response; the information to be provided; the form and manner in which the interested party must submit the information; and that failure to submit requested information in the requested form and manner by the date specified may result in use of the facts available under section 776 of the Act and § 351.308.

(iii) Interested parties will have at least 30 days from the date of receipt to respond to the full initial questionnaire. The time limit for response to individual sections of the questionnaire, if the Secretary requests a separate response to such sections, may be less than the 30 days allotted for response to the full questionnaire. The date of receipt will be seven days from the date on which the initial questionnaire was transmitted.

(iv) A notification by an interested party, under section 782(c)(1) of the Act, of difficulties in submitting information in response to a questionnaire issued by the Secretary is due within 14 days after the date of receipt of the initial questionnaire.

(v) A respondent interested party may request in writing that the Secretary conduct a questionnaire presentation. The Secretary may conduct a questionnaire presentation if the Secretary notifies the government of the affected country and that government does not object.

(3) *Submission of publicly available information to value factors under § 351.408(c).* Notwithstanding paragraph (b) of this section, interested parties may submit publicly available information to value factors under § 351.408(c) within:

(i) For a final determination in an antidumping investigation, 40 days after the date of publication of the preliminary determination;

(ii) For the final results of an administrative review, new shipper review, or changed circumstances review, 20 days after the date of publication of the preliminary results of review; and

(iii) For the final results of an expedited antidumping review, a date specified by the Secretary.

(d) *Time limits for certain allegations.* (1) *Market viability and the basis for determining a price-based normal value.* In an antidumping investigation or administrative review, allegations regarding market viability, including the exceptions in § 351.404(c)(2), are due, with all supporting factual information, within 40 days after the date on which the initial questionnaire was transmitted, unless the Secretary alters this time limit.

(2) *Sales at prices below the cost of production.* An allegation of sales at prices below the cost of production made by the petitioner or other domestic interested party is due within:

(i) In an antidumping investigation,

(A) On a country-wide basis, 20 days after the date on which the initial questionnaire was transmitted to any person, unless the Secretary alters this time limit; or

(B) On a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit;

(ii) In an administrative review, new shipper review, or changed circumstances review, on a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit; or

(iii) In an expedited antidumping review, on a company-specific basis, 10 days after the date of publication of the notice of initiation of the review.

(3) *Countervailable subsidy; upstream subsidy.* (i) *In general.* A countervailable subsidy allegation made by the petitioner or other domestic interested party is due no later than:

(A) In a countervailing duty investigation, 40 days before the scheduled date of the preliminary determination; or

(B) In an administrative review, new shipper review, or changed circumstances review, 20 days after all responses to the initial questionnaire are filed with the Department, unless the Secretary alters this time limit.

(ii) *Exception for upstream subsidy allegation in an investigation.* In a countervailing duty investigation, an allegation of upstream subsidies made by the petitioner or other domestic interested party is due no later than:

(A) 10 days before the scheduled date of the preliminary determination; or

(B) 15 days before the scheduled date of the final determination.

(4) *Targeted dumping.* In an antidumping investigation, an allegation of targeted dumping made by the petitioner or other domestic interested party under § 351.414(f)(3) is due no later than 30 days before the scheduled date of the preliminary determination.

§ 351.302 Extension of time limits; return of untimely filed or unsolicited material.

(a) *Introduction.* This section sets forth the procedures for requesting an extension of a time limit. In addition, this section explains that certain untimely filed or unsolicited material will be returned to the submitter together with an explanation of the reasons for the return of such material.

(b) *Extension of time limits.* Unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established by this Part.

(c) *Requests for extension of specific time limit.* Before the applicable time limit specified under § 351.301 expires, a party may request an extension pursuant to paragraph (b) of this section. The request must be in writing and state the reasons for the request. An extension must be approved in writing.

(d) *Return of untimely filed or unsolicited material.* (1) Unless the Secretary extends a time limit under paragraph (b) of this section, the Secretary will not consider or retain in the official record of the proceeding:

(i) Untimely filed factual information, written argument, or other material that the Secretary returns to the submitter, except as provided under § 351.104(a)(2); or

(ii) Unsolicited questionnaire responses, except as provided under § 351.204(d)(2).

(2) The Secretary will return such information, argument, or other

material, or unsolicited questionnaire response with, to the extent practicable, written notice stating the reasons for return.

§ 351.303 Filing, format, translation, service, and certification of documents.

(a) *Introduction.* This section contains the procedural rules regarding filing, format, service, translation, and certification of documents and applies to all persons submitting documents to the Department for consideration in an antidumping or countervailing duty proceeding.

(b) *Where to file; time of filing.* Persons must address and submit all documents to the Department with the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, between the hours of 8:30 a.m. and 5:00 p.m. on business days (see § 351.103(b)). If the applicable time limit expires on a non-business day, the Secretary will accept documents that are filed on the next business day.

(c) *Number of copies; filing of business proprietary and public versions under the one-day lag rule; information in double brackets.* (1) *In general.* Except as provided in paragraphs (c)(2) and (c)(3) of this section, a person must file six copies of each submission with the Department.

(2) *Application of the one-day lag rule.* (i) *Filing the business proprietary version.* A person must file one copy of the business proprietary version of any document with the Department within the applicable time limit. Business proprietary version means the version of a document containing information for which a person claims business proprietary treatment under § 351.304.

(ii) *Filing the final business proprietary version; bracketing corrections.* By the close of business one business day after the date the business proprietary version is filed under paragraph (c)(2)(i) of this section, a person must file six copies of the final business proprietary version of the document with the Department. The final business proprietary version must be identical to the business proprietary version filed on the previous day except for any bracketing corrections. Although a person must file six copies of the complete final business proprietary version with the Department, the person may serve other persons with only those pages containing bracketing corrections.

(iii) *Filing the public version.* Simultaneously with the filing of the final business proprietary version under paragraph (c)(2)(ii) of this section, a person also must file three copies of the public version of such document (see § 351.304(c)) with the Department.

(iv) *Information in double brackets.* If a person serves authorized applicants with a business proprietary version of a document that excludes information in double brackets pursuant to § 351.304(b)(2), the person simultaneously must file with the Department one copy of those pages in which information in double brackets has been excluded.

(3) *Computer media and printouts.* The Secretary may require submission of factual information on computer media unless the Secretary modifies such requirements under section 782(c) of the Act (see § 351.301(c)(2)(iv)). The computer medium must be accompanied by the number of copies of any computer printout specified by the Secretary. All information on computer media must be releasable under APO (see § 351.305).

(d) *Format of copies.* (1) *In general.* Unless the Secretary alters the requirements of this section, documents filed with the Department must conform to the specification and marking requirements under paragraph (d)(2) of this section or the Secretary may refuse to accept such documents for the official record of the proceeding.

(2) *Specifications and markings.* A person must submit documents on letter-size paper, single-sided and double-spaced, and must securely bind each copy as a single document with any letter of transmittal as the first page of the document. A submitter must mark the first page of each document in the upper right-hand corner with the following information in the following format:

(i) On the first line, except for a petition, indicate the Department case number;

(ii) On the second line, indicate the total number of pages in the document including cover pages, appendices, and any unnumbered pages;

(iii) On the third line, indicate whether the document is for an investigation, scope inquiry, downstream product monitoring application, or review and, if the latter, indicate the inclusive dates of the review, the type of review, and the section number of the Act corresponding to the type of review;

(iv) On the fourth line, indicate the Department office conducting the proceeding;

(v) On the fifth and subsequent lines, indicate whether any portion of the document contains business proprietary information and, if so, list the applicable page numbers and state either ''Document May be Released Under APO'' or ''Document May Not be Released Under APO.'' The top of each page containing the business proprietary information must state ''Business Proprietary Treatment Requested'' and the warning ''Bracketing of Business Proprietary Information is Not Final for One Business Day After Date of Filing'' (see § 351.303(c)(2) and § 351.304(c)); and

(vi) For public versions of business proprietary documents required under § 351.304(c), complete the marking as required in paragraphs (d)(2)(i)–(v) of this section for the business proprietary document, but conspicuously mark the first page ''Public Version.''

(e) *Translation to English.* A document submitted in a foreign language must be accompanied by an English translation, unless the Secretary waives this requirement for an individual document.

(f) *Service of copies on other persons.* (1) *In general.* Except as provided in § 351.202(c) (filing of petition), § 351.207(f)(1) (submission of proposed suspension agreement), and paragraph (f)(3) of this section, a person filing a document with the Department simultaneously must serve a copy of the document on all other persons on the service list by personal service or first class mail.

(2) *Certificate of service.* Each document filed with the Department must include a certificate of service listing each person served (including agents), the type of document served, and the date and method of service on each person. The Secretary may refuse to accept any document that is not accompanied by a certificate of service.

(3) *Service requirements for certain documents.* (i) *Briefs.* In addition to the certificate of service requirements contained in paragraph (f)(2) of this section, a person filing a case or rebuttal brief with the Department simultaneously must serve a copy of that brief on all persons on the service list and on any U.S. Government agency that has submitted a case or rebuttal brief in the segment of the proceeding. If, under § 351.103(c), a person has designated an agent to receive service that is located in the United States, service on that person must be either by personal service on the same day the brief is filed or by overnight mail or courier on the next day. If the person has designated an agent to receive service that is located outside the United States, service on that person must be by first class airmail.

(ii) *Request for review.* In addition to the certificate of service requirements under paragraph (f)(2) of this section, an

interested party that files with the Department a request for an expedited antidumping review, an administrative review, a new shipper review, or a changed circumstances review, must serve a copy of the request by personal service or first class mail on each exporter or producer specified in the request and on the petitioner by the end of the anniversary month or within ten days of filing the request for review, whichever is later. If the interested party that files the request is unable to locate a particular exporter or producer, or the petitioner, the Secretary may accept the request for review if the Secretary is satisfied that the party made a reasonable attempt to serve a copy of the request on such person.

(g) *Certifications.* A person must file with each submission containing factual information the certification in paragraph (1) below and, in addition, if the person has legal counsel or another representative, the certification in paragraph (2) below:

(1) For the person's official responsible for presentation of the factual information:

I, (name and title), currently employed by (person), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

(2) For the person's legal counsel or other representative:

I, (name), of (law or other firm), counsel or representative to (person), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (person), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

§ 351.304 Establishing business proprietary treatment of information. [Reserved].

§ 351.305 Access to business proprietary information. [Reserved].

§ 351.306 Use of business proprietary information. [Reserved].

§ 351.307 Verification of information.

(a) *Introduction.* Prior to making a final determination in an investigation or issuing final results of review, the Secretary may verify relevant factual information. This section clarifies when verification will occur, the contents of a verification report, and the procedures for verification.

(b) *In general.* (1) Subject to paragraph (b)(4) of this section, the Secretary will verify factual information upon which the Secretary relies in:

(i) A final determination in a continuation of a previously suspended countervailing duty investigation (section 704(g) of the Act), countervailing duty investigation, continuation of a previously suspended antidumping investigation (section 705(a) of the Act), or antidumping investigation;

(ii) The final results of an expedited antidumping review;

(iii) A revocation under section 751(d) of the Act;

(iv) The final results of an administrative review, new shipper review, or changed circumstances review, if the Secretary decides that good cause for verification exists; and

(v) The final results of an administrative review if:

(A) A domestic interested party, not later than 100 days after the date of publication of the notice of initiation of review, submits a written request for verification; and

(B) The Secretary conducted no verification under this paragraph during either of the two immediately preceding administrative reviews.

(2) The Secretary may verify factual information upon which the Secretary relies in a proceeding or a segment of a proceeding not specifically provided for in paragraph (b)(1) of this section.

(3) If the Secretary decides that, because of the large number of exporters or producers included in an investigation or administrative review, it is impractical to verify relevant factual information for each person, the Secretary may select and verify a sample.

(4) The Secretary may conduct verification of a person if that person agrees to verification and the Secretary notifies the government of the affected country and that government does not object. If the person or the government objects to verification, the Secretary will not conduct verification and may disregard any or all information submitted by the person in favor of use of the facts available under section 776 of the Act and § 351.308.

(c) *Verification report.* The Secretary will report the methods, procedures, and results of a verification under this section prior to making a final determination in an investigation or issuing final results in a review.

(d) *Procedures for verification.* The Secretary will notify the government of the affected country that employees of the Department will visit with the persons listed below in order to verify the accuracy and completeness of submitted factual information. The notification will, where practicable, identify any member of the verification team who is not an officer of the U.S. Government. As part of the verification, employees of the Department will request access to all files, records, and personnel which the Secretary considers relevant to factual information submitted of:

(1) Producers, exporters, or importers;

(2) Persons affiliated with the persons listed in paragraph (d)(1) of this section, where applicable;

(3) Unaffiliated purchasers, or

(4) The government of the affected country as part of verification in a countervailing duty proceeding.

§ 351.308 Determinations on the basis of the facts available.

(a) *Introduction.* The Secretary may make determinations on the basis of the facts available whenever necessary information is not available on the record, an interested party or any other person withholds or fails to provide information requested in a timely manner and in the form required or significantly impedes a proceeding, or the Secretary is unable to verify submitted information. If the Secretary finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Secretary may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. This section lists some of the sources of information upon which the Secretary may base an adverse inference and explains the actions the Secretary will take with respect to corroboration of information.

(b) *In general.* The Secretary may make a determination under the Act and this Part based on the facts otherwise available in accordance with section 776(a) of the Act.

(c) *Adverse Inferences.* For purposes of section 776(b) of the Act, an adverse inference may include reliance on:

(1) Secondary information, such as information derived from:

(i) The petition;

(ii) A final determination in a countervailing duty investigation or an antidumping investigation;

(iii) Any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or

(2) Any other information placed on the record.

(d) *Corroboration of secondary information.* Under section 776(c) of the Act, when the Secretary relies on secondary information, the Secretary will, to the extent practicable, corroborate that information from independent sources that are reasonably at the Secretary's disposal. Independent sources may include, but are not limited to, published price lists, official import statistics and customs data, and

information obtained from interested parties during the instant investigation or review. Corroborate means that the Secretary will examine whether the secondary information to be used has probative value. The fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate.

(e) *Use of certain information.* In reaching a determination under the Act and this Part, the Secretary will not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the Secretary if the conditions listed under section 782(e) of the Act are met.

§ 351.309 Written argument.

(a) *Introduction.* Written argument may be submitted during the course of an antidumping or countervailing duty proceeding. This section sets forth the time limits for submission of case and rebuttal briefs and provides guidance on what should be contained in these documents.

(b) *Written argument.* (1) *In general.* In making the final determination in a countervailing duty investigation or antidumping investigation or the final results of an administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review, the Secretary will consider written arguments in case or rebuttal briefs filed within the time limits in this section.

(2) *Written argument on request.* Notwithstanding paragraph (b)(1) of this section, the Secretary may request written argument on any issue from any person or U.S. Government agency at any time during a proceeding.

(c) *Case brief.* (1) Any interested party or U.S. Government agency may submit a ''case brief'' within:

(i) For a final determination in a countervailing duty investigation or antidumping investigation, 50 days after the date of publication of the preliminary determination, unless the Secretary alters this time limit;

(ii) For the final results of an administrative review, new shipper review, changed circumstances review, or section 762 review, 30 days after the date of publication of the preliminary results of review, unless the Secretary alters the time limit; or

(iii) For the final results of an expedited antidumping review, sunset review, Article 8 violation review, Article 4/Article 7 review, or section 753 review, a date specified by the Secretary.

(2) The case brief must present all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results, including any arguments presented before the date of publication of the preliminary determination or preliminary results. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages.

(d) *Rebuttal brief.* (1) Any interested party or U.S. Government agency may submit a ''rebuttal brief'' within five days after the time limit for filing the case brief, unless the Secretary alters this time limit.

(2) The rebuttal brief may respond only to arguments raised in case briefs and should identify the arguments to which it is responding. As part of the rebuttal brief, parties are encouraged to provide a summary of the arguments not to exceed five pages.

§ 351.310 Hearings.

(a) *Introduction.* This section sets forth the procedures for requesting a hearing, indicates that the Secretary may consolidate hearings, and explains when the Secretary may hold closed hearing sessions.

(b) *Pre-hearing conference.* The Secretary may conduct a telephone pre-hearing conference with representatives of interested parties to facilitate the conduct of the hearing.

(c) *Request for hearing.* Any interested party may request that the Secretary hold a public hearing on arguments to be raised in case or rebuttal briefs within 30 days after the date of publication of the preliminary determination or preliminary results of review, unless the Secretary alters this time limit, or in a proceeding where the Secretary will not issue a preliminary determination, not later than a date specified by the Secretary. To the extent practicable, a party requesting a hearing must identify arguments to be raised at the hearing. At the hearing, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief.

(d) *Hearings in general.* (1) If an interested party submits a request under paragraph (c) of this section, the Secretary will hold a public hearing on the date stated in the notice of the Secretary's preliminary determination or preliminary results of administrative review (or otherwise specified by the Secretary in an expedited antidumping review), unless the Secretary alters the date. Ordinarily, the hearing will be held two days after the scheduled date for submission of rebuttal briefs.

(2) The hearing is not subject to 5 U.S.C. 551–559, and 702 (Administrative Procedure Act). Witness testimony, if any, will not be under oath or subject to cross-examination by another interested party or witness. During the hearing, the chair may question any person or witness and may request persons to present additional written argument.

(e) *Consolidated hearings.* At the Secretary's discretion, the Secretary may consolidate hearings in two or more cases.

(f) *Closed hearing sessions.* An interested party may request a closed session of the hearing no later than the date the case briefs are due in order to address limited issues during the course of the hearing. The requesting party must identify the subjects to be discussed, specify the amount of time requested, and justify the need for a closed session with respect to each subject. If the Secretary approves the request for a closed session, only authorized applicants and other persons authorized by the regulations may be present for the closed session (see § 351.305).

(g) *Transcript of hearing.* The Secretary will place a verbatim transcript of the hearing in the public and official records of the proceeding and will announce at the hearing how interested parties may obtain copies of the transcript.

§ 351.311 Countervailable subsidy practice discovered during investigation or review.

(a) *Introduction.* During the course of a countervailing duty investigation or review, Department officials may discover or receive notice of a practice that appears to provide a countervailable subsidy. This section explains when the Secretary will examine such a practice.

(b) *Inclusion in proceeding.* If during a countervailing duty investigation or a countervailing duty administrative review the Secretary discovers a practice that appears to provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding, or if, pursuant to section 775 of the Act, the Secretary receives notice from the United States Trade Representative that a subsidy or subsidy program is in violation of Article 8 of the Subsidies Agreement, the Secretary will examine the practice, subsidy, or subsidy program if the Secretary concludes that sufficient time remains before the scheduled date for the final determination or final results of review.

(c) *Deferral of examination.* If the Secretary concludes that insufficient time remains before the scheduled date for the final determination or final results of review to examine the practice, subsidy, or subsidy program described in paragraph (b) of this section, the Secretary will:

(1) During an investigation, allow the petitioner to withdraw the petition without prejudice and resubmit it with an allegation with regard to the newly discovered practice, subsidy, or subsidy program; or

(2) During an investigation or review, defer consideration of the newly discovered practice, subsidy, or subsidy program until a subsequent administrative review, if any.

(d) *Notice.* The Secretary will notify the parties to the proceeding of any practice the Secretary discovers, or any subsidy or subsidy program with respect to which the Secretary receives notice from the United States Trade Representative, and whether or not it will be included in the then ongoing proceeding.

§ 351.312 Industrial users and consumer organizations.

(a) *Introduction.* The URAA provides for opportunity for comment by consumer organizations and industrial users on matters relevant to a particular determination of dumping, subsidization, or injury. This section indicates under what circumstances such persons may submit relevant information and argument.

(b) *Opportunity to submit relevant information and argument.* In an antidumping or countervailing duty proceeding under title VII of the Act and this Part, an industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, may submit relevant factual information and written argument to the Department under § 351.301(b) and paragraphs (c) and (d) of § 351.309 concerning dumping or a countervailable subsidy. All such submissions must be filed in accordance with § 351.303.

(c) *Business proprietary information.* Persons described in paragraph (b) of this section may request business proprietary treatment of information under § 351.304, but will not be granted access under § 351.305 to business proprietary information submitted by other persons.

Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value, and Normal Value

§ 351.401 In general.

(a) *Introduction.* In general terms, an antidumping analysis involves a comparison of export price or constructed export price in the United States with normal value in the foreign market. This section establishes certain general rules that apply to the calculation of export price, constructed export price and normal value. (See section 772, section 773, and section 773A of the Act).

(b) *Adjustments in general.* In making adjustments to export price, constructed export price, or normal value, the Secretary will adhere to the following principles:

(1) Any interested party that claims an adjustment must establish the claim to the satisfaction of the Secretary.

(2) The Secretary will not double-count adjustments.

(c) *Discounts, rebates, and other price adjustments.* In calculating export price, constructed export price, and normal value (where normal value is based on price), the Secretary will rely upon a price net of any discounts, rebates, or post-sale adjustments to price that are reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable).

(d) *Delayed payment or pre-payment of expenses.* Where cost is the basis for determining the amount of an adjustment to export price, constructed export price, or normal value, the Secretary will not factor in any delayed payment or pre-payment of expenses by the exporter or producer.

(e) *Adjustments for movement expenses.* In making adjustments for movement expenses to export price or constructed export price under section 772(c)(2)(A) of the Act, or to normal value under section 773(a)(6)(B)(ii) of the Act:

(1) The Secretary may adjust for warehousing expenses; and

(2) The ''original place of shipment'' means the original place from which the seller shipped the goods.

(f) *Treatment of affiliated producers in antidumping proceedings.* In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:

(1) The level of common ownership;

(2) Whether managerial employees or board members of one of the affiliated producers sit on the board of directors of the other affiliated person; and

(3) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

(g) *Allocation of expenses.* The Secretary may consider allocated expenses when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions.

(h) *Treatment of subcontractors (''tolling'' operations).* The Secretary will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale of the subject merchandise or foreign like product.

(i) *Date of sale.* In identifying the date of a sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.

§ 351.402 Calculation of export price and constructed export price; reimbursement of antidumping and countervailing duties.

(a) *Introduction.* In order to establish export price, constructed export price, and normal value, the Secretary must make certain adjustments to the price to the unaffiliated purchaser (often called the ''starting price'') in both the United States and foreign markets. This regulation clarifies how the Secretary will make certain of the adjustments to the starting price in the United States that are required by section 772 of the Act.

(b) *Additional adjustments to constructed export price.* The Secretary will make adjustments to constructed export price under section 772(d) of the Act for expenses associated with commercial activities in the United States, no matter where incurred.

(c) *Special rule for merchandise with value added after importation.* (1) *Merchandise imported by affiliated persons.* In applying section 772(e) of the Act, merchandise imported by and value added by a person affiliated with the exporter or producer includes

merchandise imported and value added for the account of such an affiliated person.

(2) *Estimation of value added.* The Secretary normally will determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if the Secretary estimates the value added to be at least 60 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. The Secretary normally will estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the price paid for the subject merchandise by the affiliated person. The Secretary normally will base this determination on averages of the prices and the value added to the subject merchandise.

(3) *Determining dumping margins.* For purposes of determining dumping margins under paragraphs (1) and (2) of section 772(e) of the Act, the Secretary may use the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons.

(d) *Special rule for determining profit.* This paragraph sets forth rules for calculating profit in establishing constructed export price under section 772(f) of the Act.

(1) *Basis for total expenses and total actual profit.* In calculating total expenses and total actual profit, the Secretary normally will use the aggregate of expenses and profit for all subject merchandise sold in the United States and all foreign like products sold in the exporting country, including sales that have been disregarded as being below the cost of production. (See section 773(b) of the Act).

(2) *Use of financial reports.* For purposes of determining profit under section 772(d)(3) of the Act, the Secretary may rely on any appropriate financial reports, including public, audited financial statements, or equivalent financial reports, and internal financial reports prepared in the ordinary course of business.

(3) *Voluntary reporting of costs of production.* The Secretary will not require the reporting of costs of production solely for purposes of determining the amount of profit to be deducted from the constructed export price. The Secretary will base the calculation of profit on costs of production if such costs are reported voluntarily by the date established by the Secretary, and provided that it is practicable to do so and the costs of production are verifiable.

(e) *Treatment of payments between affiliated persons.* Where a person affiliated with the exporter or producer incurs any of the expenses deducted from constructed export price under section 772(d) of the Act and is reimbursed for such expenses by the exporter, producer or other affiliate, the Secretary normally will make an adjustment based on the actual cost to the affiliated person. If the Secretary is satisfied that information regarding the actual cost to the affiliated person is unavailable to the exporter or producer, the Secretary may determine the amount of the adjustment on any other reasonable basis, including the amount of the reimbursement to the affiliated person if the Secretary is satisfied that such amount reflects the amount usually paid in the market under consideration.

(f) *Reimbursement of antidumping duties and countervailing duties.* (1) *In general.* (i) In calculating the export price (or the constructed export price), the Secretary will deduct the amount of any antidumping duty or countervailing duty which the exporter or producer:

(A) Paid directly on behalf of the importer; or

(B) Reimbursed to the importer.

(ii) The Secretary will not deduct the amount of any antidumping duty or countervailing duty paid or reimbursed if the exporter or producer granted to the importer before initiation of the antidumping investigation in question a warranty of nonapplicability of antidumping duties or countervailing duties with respect to subject merchandise which was:

(A) Sold before the date of publication of the Secretary's order applicable to the merchandise in question; and

(B) Exported before the date of publication of the Secretary's final antidumping determination. Ordinarily, the Secretary will deduct the amount reimbursed only once in the calculation of the export price (or constructed export price).

(2) *Certificate.* The importer must file prior to liquidation a certificate in the following form with the appropriate District Director of Customs:

I hereby certify that I (have) (have not) entered into any agreement or understanding for the payment or for the refunding to me, by the manufacturer, producer, seller, or exporter, of all or any part of the antidumping duties or countervailing duties assessed upon the following importations of (commodity) from (country): (List entry numbers) which have been purchased on or after (date of publication of antidumping notice suspending liquidation in the Federal Register) or purchased before (same date) but exported on or after (date of final determination of sales at less than fair value).

(3) *Presumption.* The Secretary may presume from an importer's failure to file the certificate required in paragraph (f)(2) of this section that the exporter or producer paid or reimbursed the antidumping duties or countervailing duties.

§ 351.403. Sales used in calculating normal value; transactions between affiliated parties.

(a) *Introduction.* This section clarifies when the Secretary may use offers for sale in determining normal value. Additionally, this section clarifies the authority of the Secretary to use sales to or through an affiliated party as a basis for normal value. (See section 773(a)(1)(B) and section 773(a)(5) of the Act.)

(b) *Sales and offers for sale.* In calculating normal value, the Secretary normally will consider offers for sale only in the absence of sales and only if the Secretary concludes that acceptance of the offer can be reasonably expected.

(c) *Sales to an affiliated party.* If an exporter or producer sold the foreign like product to an affiliated party, the Secretary may calculate normal value based on that sale only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller.

(d) *Sales through an affiliated party.* If an exporter or producer sold the foreign like product through an affiliated party, the Secretary may calculate normal value based on the sale by such affiliated party. (See section 773(a)(5) of the Act.)

§ 351.404 Selection of the market to be used as the basis for normal value.

(a) *Introduction.* Although in most circumstances sales of the foreign like product in the home market are the most appropriate basis for determining normal value, section 773 of the Act also permits use of sales to a third country or constructed value as the basis for normal value. This section clarifies the rules for determining the basis for normal value.

(b) *Determination of viable market.* (1) *In general.* The Secretary will consider the exporting country or a third country as constituting a viable market if the Secretary is satisfied that sales of the foreign like product in that country are of sufficient quantity to form the basis of normal value.

(2) *Sufficient quantity.* ''Sufficient quantity'' normally means that the aggregate quantity (or, if quantity is not

appropriate, value) of the foreign like product sold by an exporter or producer in a country is 5 percent or more of the aggregate quantity (or value) of its sales of the subject merchandise to the United States.

(c) *Calculation of price-based normal value in viable market.* (1) *In general.* Subject to paragraph (c)(2) of this section:

(i) If the exporting country constitutes a viable market, the Secretary will calculate normal value on the basis of price in the exporting country (see section 773(a)(1)(B)(i) of the Act); or

(ii) If the exporting country does not constitute a viable market, but a third country does constitute a viable market, the Secretary may calculate normal value on the basis of price to a third country (see section 773(a)(1)(B)(ii) of the Act).

(2) *Exception.* The Secretary may decline to calculate normal value in a particular market under paragraph (c)(1) of this section if it is established to the satisfaction of the Secretary that:

(i) In the case of the exporting country or a third country, a particular market situation exists that does not permit a proper comparison with the export price or constructed export price (see section 773(a)(1)(B)(ii)(III) or section 773(a)(1)(C)(iii) of the Act; or

(ii) In the case of a third country, the price is not representative (see section 773(a)(1)(B)(ii)(I) of the Act).

(d) *Allegations concerning market viability and the basis for determining a price-based normal value.* In an antidumping investigation or review, allegations regarding market viability or the exceptions in paragraph (c)(2) of this section, must be filed, with all supporting factual information, in accordance with § 351.301(d)(1).

(e) *Selection of third country.* For purposes of calculating normal value based on prices in a third country, where prices in more than one third country satisfy the criteria of section 773(a)(1)(B)(ii) of the Act and this section, the Secretary generally will select the third country based on the following criteria:

(1) The foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries;

(2) The volume of sales to a particular third country is larger than the volume of sales to other third countries;

(3) Such other factors as the Secretary considers appropriate.

(f) *Third country sales and constructed value.* The Secretary normally will calculate normal value based on sales to a third country rather than on constructed value if adequate information is available and verifiable (see section 773(a)(4) of the Act).

§ 351.405 Calculation of normal value based on constructed value.

(a) *Introduction.* In certain circumstances, the Secretary may determine normal value by constructing a value based on the cost of manufacture, selling general and administrative expenses, and profit. The Secretary may use constructed value as the basis for normal value where: Neither the home market nor a third country market is viable; sales below the cost of production are disregarded; sales outside the ordinary course of trade, or sales the prices of which are otherwise unrepresentative, are disregarded; sales used to establish a fictitious market are disregarded; no contemporaneous sales of comparable merchandise are available; or in other circumstances where the Secretary determines that home market or third country prices are inappropriate. (See section 773(e) and section 773(f) of the Act). This section clarifies the meaning of certain terms relating to constructed value.

(b) *Profit and selling, general, and administrative expenses.* In determining the amount to be added to constructed value for profit and for selling, general, and administrative expenses, the following rules will apply:

(1) Under section 773(e)(2)(A) of the Act, ''foreign country'' means the country in which the merchandise is produced or a third country selected by the Secretary under § 351.404(e), as appropriate.

(2) Under section 773(e)(2)(B) of the Act, ''foreign country'' means the country in which the merchandise is produced.

§ 351.406 Calculation of normal value if sales are made at less than cost of production.

(a) *Introduction.* In determining normal value, the Secretary may disregard sales of the foreign-like product made at prices that are less than the cost of production of that product. However, among other criteria, such sales will be disregarded only if they are made within an extended period of time. (See section 773(b) of the Act.) This section clarifies the meaning of the term ''extended period of time'' as used in the Act.

(b) *Extended period of time.* The ''extended period of time'' under section 773(b)(1)(A) of the Act normally will coincide with the period in which the sales under consideration for the determination of normal value were made.

§ 351.407 Calculation of constructed value and cost of production.

(a) *Introduction.* This section sets forth certain rules that are common to the calculation of constructed value and the cost of production. (See section 773(f) of the Act).

(b) *Allocation of costs.* In determining the appropriate method for allocating costs among products, the Secretary may take into account production quantities, relative sales values, and other quantitative and qualitative factors associated with the manufacture and sale of the subject merchandise and the foreign like product.

(c) *Startup costs.* (1) In identifying startup operations under section 773(f)(1)(C)(ii) of the Act:

(i) ''New production facilities'' includes the substantially complete retooling of an existing plant. Substantially complete retooling involves the replacement of nearly all production machinery or the equivalent rebuilding of existing machinery.

(ii) A ''new product'' is one requiring substantial additional investment, including products which, though sold under an existing nameplate, involve the complete revamping or redesign of the product. Routine model year changes will not be considered a new product.

(iii) Mere improvements to existing products or ongoing improvements to existing facilities will not be considered startup operations.

(iv) An expansion of the capacity of an existing production line will not qualify as a startup operation unless the expansion constitutes such a major undertaking that it requires the construction of a new facility and results in a depression of production levels due to technical factors associated with the initial phase of commercial production of the expanded facilities.

(2) In identifying the end of the startup period under clauses (ii) and (iii) of section 773(f)(1)(C) of the Act:

(i) The attainment of peak production levels will not be the standard for identifying the end of the startup period, because the startup period may end well before a company achieves optimum capacity utilization.

(ii) The startup period will not be extended to cover improvements and cost reductions that may occur over the entire life cycle of a product.

(3) In determining when a producer reaches commercial production levels under section 773(f)(1)(C)(ii) of the Act:

(i) The Secretary will consider the actual production experience of the merchandise in question, measuring production on the basis of units processed.

(ii) To the extent necessary, the Secretary will examine factors in addition to those specified in section 773(f)(1)(C)(ii) of the Act, including historical data reflecting the same producer's or other producers' experiences in producing the same or similar products. A producer's projections of future volume or cost will be accorded little weight.

(4) In making an adjustment for startup operations under section 773(f)(1)(C)(iii) of the Act:

(i) The Secretary will determine the duration of the startup period on a case-by-case basis.

(ii) The difference between actual costs and the costs of production calculated for startup costs will be amortized over a reasonable period of time subsequent to the startup period over the life of the product or machinery, as appropriate.

(iii) The Secretary will consider unit production costs to be items such as depreciation of equipment and plant, labor costs, insurance, rent and lease expenses, material costs, and overhead. The Secretary will not consider sales expenses, such as advertising costs, or other non-production costs, as startup costs.

§ 351.408 Calculation of normal value of merchandise from nonmarket economy countries.

(a) *Introduction.* In identifying dumping from a nonmarket economy country, the Secretary normally will calculate normal value by valuing the nonmarket economy producers' factors of production in a market economy country. (See section 773(c) of the Act.) This section clarifies when and how this special methodology for nonmarket economies will be applied.

(b) *Economic Comparability.* In determining whether a country is at a level of economic development comparable to the nonmarket economy under section 773(c)(2)(B) or section 773(c)(4)(A) of the Act, the Secretary will place primary emphasis on per capita GDP as the measure of economic comparability.

(c) *Valuation of Factors of Production.* For purposes of valuing the factors of production, general expenses, profit, and the cost of containers, coverings, and other expenses (referred to collectively as ''factors'') under section 773(c)(1) of the Act the following rules will apply:

(1) *Information used to value factors.* The Secretary normally will use publicly available information to value factors. However, where a factor is purchased from a market economy producer and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier. In those instances where a portion of the factor is purchased from a market economy source and the remainder from a nonmarket economy producer, the Secretary normally will value the factor using the price paid to the market economy supplier.

(2) *Valuation in a single country.* Except for labor, as provided in paragraph (d)(3) of this section, the Secretary normally will value all factors in a single surrogate country.

(3) *Labor.* For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries found to be economically comparable to the nonmarket economy country under section 773(c)(4)(A) of the Act. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

(4) *Manufacturing overhead, general expenses, and profit.* For manufacturing overhead, general expenses, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.

§ 351.409 Differences in quantities.

(a) *Introduction.* Because the quantity of merchandise sold may affect the price, in comparing export price or constructed export price with normal value, the Secretary normally will use sales of comparable quantities of merchandise. Where this is not practicable, the Secretary will make a reasonable allowance for any difference in quantities to the extent the Secretary is satisfied that the amount of any price differential (or lack thereof) is wholly or partly due to that difference in quantities. (See section 773(a)(6)(C)(i) of the Act.) In making the allowance, the Secretary will consider, among other things, the practice of the industry in the relevant country of granting quantity discounts in the ordinary course of trade.

(b) *Sales with quantity discounts in calculating normal value.* The Secretary normally will calculate normal value based on sales with quantity discounts only if:

(1) During the period examined, or during a more representative period, the exporter or producer granted quantity discounts of at least the same magnitude on 20 percent or more of sales of the foreign like product for the relevant country; or

(2) The exporter or producer demonstrates to the Secretary's satisfaction that the discounts reflect savings specifically attributable to the production of the different quantities.

(c) *Sales with quantity discounts in calculating weighted-average normal value.* If the exporter or producer does not satisfy the conditions of paragraph (b) of this section, the Secretary will calculate normal value based on weighted-average prices that include sales at a discount.

(d) *Price lists.* In determining whether a discount has been granted, the existence or lack thereof of a published price list reflecting such a discount will not be controlling. Ordinarily, the Secretary will give weight to a price list only if, in the line of trade and market under consideration, the exporter or producer demonstrates that it has adhered to its price list.

(e) *Relationship to level of trade adjustment.* If adjustments are claimed for both differences in quantities and differences in level of trade, the Secretary will not make an adjustment for differences in quantities unless the Secretary is satisfied that the effect on price comparability of differences in quantities has been identified and established separately from the effect on price comparability of differences in the levels of trade.

§ 351.410 Differences in circumstances of sale.

(a) *Introduction.* In calculating normal value the Secretary may make adjustments to account for certain differences in the circumstances of sales in the United States and foreign markets. (See section 773(a)(6)(C)(iii) of the Act). This section clarifies certain terms used in the statute regarding circumstances of sale adjustments and describes the adjustment when commissions are paid only in one market.

(b) *Direct selling expenses.* Under this section, ''direct selling expenses'' are expenses, such as commissions, credit expenses, guarantees, and warranties, that result from, and bear a direct relationship to, the particular sale in question.

(c) *Assumed expenses.* Assumed expenses are selling expenses that are assumed by the seller on behalf of the buyer, such as advertising expenses.

(d) *Reasonable allowance.* In deciding what is a reasonable allowance for any difference in circumstances of sale, the Secretary normally will consider the cost of such difference to the exporter or producer but, if appropriate, may also consider the effect of such difference on the market value of the merchandise.

(e) *Commissions paid in one market.* The Secretary normally will make a reasonable allowance for other selling expenses if the Secretary makes a reasonable allowance for commissions in one of the markets under consideration, and no commission is paid in the other market under consideration. The Secretary will limit the amount of such allowance to the amount of the other selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

§ 351.411 Differences in physical characteristics.

(a) *Introduction.* In comparing United States sales with foreign market sales, the Secretary may determine that the merchandise sold in the United States does not have the same physical characteristics as the merchandise sold in the foreign market, and that the difference has an effect on prices. In calculating normal value, the Secretary will make a reasonable allowance for such differences. (See section 773(a)(6)(C)(ii) of the Act).

(b) *Reasonable allowance.* In deciding what is a reasonable allowance for differences in physical characteristics, the Secretary will consider only differences in variable costs associated with the physical differences. Where appropriate, the Secretary may also consider differences in the market value. The Secretary will not consider differences in cost of production when compared merchandise has identical physical characteristics.

§ 351.412 Levels of trade; adjustment for differences in level of trade; constructed export price offset.

(a) *Introduction.* In comparing United States sales with foreign market sales the Secretary may determine that sales in the two markets were not made at the same level of trade, and that the difference has an effect on the comparability of the prices. The Secretary is authorized to adjust normal value to account for such a difference. (See section 773(a)(7) of the Act).

(b) *Identifying levels of trade and differences in levels of trade.* In identifying the sales to be used in calculating normal value (see section 773(a)(1)(B) of the Act), and in making an adjustment for differences in level of trade or a constructed export price offset (see section 773(a)(7) of the Act), the Secretary will identify the level of trade as follows:

(1) In the case of export price and normal value, the Secretary will identify the level of trade based on the starting price;

(2) In the case of constructed export price, the Secretary will identify the level of trade based on the price after the deduction of expenses and profit under section 772(d) of the Act;

(c) *Adjustment for difference in level of trade.* (1) *In general.* The Secretary will adjust normal value for a difference in level of trade if:

(i) The Secretary calculates normal value on the basis of a sale that the Secretary determines is made at a different level of trade from the export price or the constructed export price (whichever is applicable); and

(ii) The Secretary determines that the difference in level of trade has an effect on price comparability.

(2) *Identifying different levels of trade.* The Secretary will determine that sales are made at different levels of trade if such sales involve the performance of different selling functions and activities. In making this determination, the Secretary will consider all selling functions and activities performed by the seller. The fact that there is some overlap in selling functions and activities will not preclude a determination that sales are made at different levels of trade. Where the selling functions and activities are substantially the same, however, sales normally will be considered to have been made at the same level of trade.

(3) *Effect on price comparability.* The Secretary will determine that a difference in level of trade has an effect on price comparability only if it is established to the satisfaction of the Secretary that, with respect to the sales used to calculate normal value, there is a pattern of consistent price differences between sales made at different levels of trade.

(4) *Amount of adjustment.* The Secretary normally will calculate the amount of a level of trade adjustment by:

(i) Calculating an average of the prices of the sales used to calculate normal value at each level of trade in the exporting country or the third country (whichever is applicable), after making any other adjustments required by section 773(a)(6) of the Act and this subpart;

(ii) Calculating the average of the percentage differences between such average prices; and

(iii) Applying the average percentage difference to the prices of sales made at the level of trade that is different from the level of trade of the export price or the constructed export price (whichever is applicable).

(d) *Constructed export price offset.* In making the constructed export price offset under section 773(a)(7)(B) of the Act, ''indirect selling expenses'' means expenses, other than direct selling expenses or assumed selling expenses (see § 351.410), that the seller would incur regardless of whether particular sales were made, but that reasonably may be attributed, in whole or in part, to such sales.

§ 351.413 Disregarding insignificant adjustments.

Ordinarily, under section 777A(a)(2) of the Act, an ''insignificant adjustment'' is any individual adjustment having an ad valorem effect of less than 0.33 percent, or any group of adjustments having an ad valorem effect of less than 1.0 percent, of the export price, constructed export price, or normal value, as the case may be. Groups of adjustments are adjustments for differences in circumstances of sale under § 351.410, adjustments for differences in the physical characteristics of the merchandise under § 351.411, and adjustments for differences in the levels of trade under § 351.412.

§ 351.414 Comparison of normal value with export price (constructed export price).

(a) *Introduction.* The Secretary normally will average prices used as the basis for normal value and, in an investigation, prices used as the basis for export price or constructed export price as well. This section explains when and how the Secretary will average prices in making comparisons of export price or constructed export price with normal value. (See section 777A(d) of the Act).

(b) *Description of methods of comparison.* (1) *Average-to-average method.* The ''average-to-average'' method involves a comparison of the weighted average of the normal values with the weighted average of the export prices (and constructed export prices) for comparable merchandise.

(2) *Transaction-to-transaction method.* The ''transaction-to-transaction'' method involves a comparison of the normal values of individual transactions with the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(3) *Average-to-transaction method.* The ''average-to-transaction'' method involves a comparison of the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(c) *Preferences.* (1) In an investigation, the Secretary normally will use the average-to-average method. The Secretary will use the transaction-to-

transaction method only in unusual situations, such as when there are very few sales of subject merchandise and the merchandise sold in each market is identical or very similar or is custom-made.

(2) In a review, the Secretary normally will use the average-to-transaction method.

(d) Application of the average-to-average method. (1) *In general.* In applying the average-to-average method, the Secretary will identify those sales of the subject merchandise to the United States that are comparable, and will include such sales in an ''averaging group.'' The Secretary will calculate a weighted average of the export prices and the constructed export prices of the sales included in the averaging group, and will compare this weighted average to the weighted average of the normal values of such sales.

(2) *Identification of the averaging group.* An averaging group will consist of subject merchandise that is identical or virtually identical in all physical characteristics and that is sold to the United States at the same level of trade. In identifying sales to be included in an averaging group, the Secretary also will take into account, where appropriate, the region of the United States in which the merchandise is sold, and such other factors as the Secretary considers relevant.

(3) *Time period over which weighted average is calculated.* When applying the average-to-average method, the Secretary normally will calculate weighted averages for the entire period of investigation or review, as the case may be. However, when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation or review, the Secretary may calculate weighted averages for such shorter period as the Secretary deems appropriate.

(e) *Application of the average-to-transaction method.* (1) *In general.* In applying the average-to-transaction method in a review, when normal value is based on the weighted average of sales of the foreign like product, the Secretary will limit the averaging of such prices to sales incurred during the contemporaneous month.

(2) *Contemporaneous month.* Normally, the Secretary will select as the contemporaneous month the first of the following which applies:

(i) The month during which the particular U.S. sale under consideration is made;

(ii) If there are no sales of the foreign like product during this month, the most recent of the three months prior to the month of the U.S. sale in which there was a sale of the foreign like product.

(iii) If there are no sales of the foreign like product during any of these months, the earlier of the two months following the month of the U.S. sale in which there was a sale of the foreign like product.

(f) *Targeted dumping.* (1) *In general.* Notwithstanding paragraph (c)(1) of this section, the Secretary may apply the average-to-transaction method, as described in paragraph (e) of this section, in an antidumping investigation if:

(i) There is targeted dumping in the form of a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time; and

(ii) The Secretary explains why such differences cannot be taken into account using the average-to-average method or the transaction-to-transaction method.

In applying paragraph (f)(1)(i) of this section, the Secretary will use, among other things, standard statistical techniques in determining whether there is a pattern of prices that differ significantly.

(2) *Limitation of average-to-transaction method to targeted dumping.* Where the criteria for identifying targeted dumping under paragraph (f)(1) of this section are satisfied, the Secretary normally will limit the application of the average-to-transaction method to those sales that constitute targeted dumping under paragraph (f)(1)(i) of this section.

(3) *Allegations concerning targeted dumping.* The Secretary will not consider targeted dumping absent an allegation, normally filed within the time indicated in § 351.301(d)(4). Allegations must include all supporting factual information, and an explanation as to why the average-to-average or transaction-to-transaction method could not take into account any alleged price differences.

(g) *Requests for information.* In an investigation, the Secretary will request information relevant to the identification of averaging groups under paragraph (d)(2) of this section and to the analysis of possible targeted dumping under paragraph (f) of this section. If a response to a request for such information is such as to warrant the application of the facts otherwise available, within the meaning of section 776 of the Act and § 351.308, the Secretary may apply the average-to-transaction method to all the sales of the producer or exporter concerned.

§ 351.415 Conversion of currency.

(a) *In general.* In an antidumping proceeding, the Secretary will convert foreign currencies into United States dollars using the rate of exchange on the date of sale of the subject merchandise.

(b) *Exception.* If the Secretary establishes that a currency transaction on forward markets is directly linked to an export sale under consideration, the Secretary will use the exchange rate specified with respect to such foreign currency in the forward sale agreement to convert the foreign currency.

(c) *Exchange rate fluctuations.* The Secretary will ignore fluctuations in exchange rates.

(d) *Sustained movement in foreign currency value.* In an antidumping investigation, if there is a sustained movement increasing the value of the foreign currency relative to the United States dollar, the Secretary will allow exporters 60 days to adjust their prices to reflect such sustained movement.

Subpart E—[Reserved]

Subpart F—Subsidy Determinations Regarding Cheese Subject to an In-Quota Rate of Duty

§ 351.601 Annual list and quarterly update of subsidies.

The Secretary will make the determinations called for by section 702(a) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 1202 note) based on the available information, and will publish the annual list and quarterly updates described in such section in the Federal Register.

§ 351.602 Determination upon request.

(a) *Request for determination.* (1) Any person, including the Secretary of Agriculture, who has reason to believe there have been changes in or additions to the latest annual list published under § 351.601 may request in writing that the Secretary determine under section 702(a)(3) of the Trade Agreements Act of 1979 whether there are any changes or additions. The person must file the request with the Central Records Unit (see § 351.103). The request must allege either a change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update provided by a foreign government, and must contain the following, to the extent reasonably available to the requesting person:

(i) The name and address of the person;

(ii) The article of cheese subject to an in-quota rate of duty allegedly benefitting from the changed or additional subsidy;

(iii) The country of origin of the article of cheese subject to an in-quota rate of duty; and

(iv) The alleged subsidy or changed subsidy and relevant factual information (particularly documentary evidence) regarding the alleged changed or additional subsidy including the authority under which it is provided, the manner in which it is paid, and the value of the subsidy to producers or exporters of the article.

(2) The requirements of § 351.303 (c) and (d) apply to this section.

(b) *Determination*. Not later than 30 days after receiving an acceptable request, the Secretary will:

(1) In consultation with the Secretary of Agriculture, determine based on the available information whether there has been any change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update is being provided by a foreign government;

(2) Notify the Secretary of Agriculture and the person making the request of the determination; and

(3) Promptly publish in the Federal Register notice of any changes or additions.

§ 351.603 Complaint of price-undercutting by subsidized imports.

Upon receipt of a complaint filed with the Secretary of Agriculture under section 702(b) of the Trade Agreements Act concerning price-undercutting by subsidized imports, the Secretary will promptly determine, under section 702(a)(3) of the Trade Agreements Act of 1979, whether or not the alleged subsidies are included in or should be added to the latest annual list or quarterly update.

§ 351.604 Access to information.

Subpart C of this part applies to factual information submitted in connection with this subpart.

Annex I.—Deadlines for Parties in Countervailing Investigations

Deadlines for Parties in Countervailing Investigations

Day	Event	Proposed regulation
0 days	Date of Initiation [1]	
31 days [2]	Extension request for responses to questionnaires	351.301(c)(2)(iv).
37 days	Application for an Administrative Protective Order	351.305(b)(3).
40 days	Request for postponement by petitioner	351.205(e).
45 days	Allegation of critical circumstances	351.206(c)(2)(i).
47 days	Questionnaire Response Due	351.301(c)(2)(iii).
No deadline in an investigation	Exclusion requests	351.204(e)(3).
55 days	Allegation of upstream subsidies	351.301(d)(3)(ii)(B).
65 days (Can be extended)	Preliminary Determination	351.205(b)(1).
70 days	Submission of proposed suspension agreement	351.208(f)(1).
75 days [3]	Submission of information	351.301(b)(1).
75 days	Ministerial error comments	351.224(c)(2).
77 days	Request to align a CVD case with a concurrent AD case	351.210(i).
80 days	Replies to ministerial error comments	351.224(c)(3).
102 days	Request for a hearing	351.310(c).
115 days (Can be changed)	Closed hearing sessions	351.310(f).
115 days (Can be changed)	Submission of briefs	351.309(c)(1)(i).
119 days	Critical circumstances allegation	351.206(e).
120 days	Submission of rebuttal briefs	351.309(d).
125 days	Allegation of upstream subsidies	351.301(d)(3)(ii)(B).
140 days (Can be extended)	Final Determination	351.210.
170 days	Ministerial error comments	351.224(c)(2).
175 days	Replies to ministerial error comments	351.224(c)(3).
175 days	Request for exception from the assessment of duties	351.211(d).
192 days	Termination of suspension of liquidation	351.210(h).
212 days	Order issued	351.211.

[1] All of the following references to days are keyed to the date of initiation.
[2] This assumes that the Department will send out the questionnaire within 15 days of the initiation.
[3] Assuming about 17 days between the preliminary determination and verification

Annex II.—Deadlines for Parties in Countervailing Administrative Reviews

Deadlines for Parties in Countervailing Administrative Reviews

Day	Event	Proposed Regulation
0 days[1]	Last Day of the Anniversary Month	351.213(b).
30 days	Publication of Initiation	None.
37 days	Application for an Administrative Protective Order	351.305(b)(3).
66 days	Extension request for responses to questionnaires	351.301(c)(2)(iv).
82 days	Questionnaire response	351.301(c)(2)(iii).
120 days	Withdrawal of Request for Review	351.213(d)(1).
170 days	Submission of information	351.301(b)(2).
245 days (Can be extended)	Preliminary Results	351.213(h)(1)
255 days	Ministerial error comments	351.224(c)(2).
260 days	Replies to ministerial error comments	351.224(c)(3).
282 days	Request for a hearing	351.310(c).
282 days (Can be changed)	Closed hearing sessions	351.310(f).
282 days (Can be changed)	Submission of briefs	351.309(c)(1)(ii).

Day	Event	Proposed Regulation
287 days	Submission of rebuttal briefs	351.309(d).
365 days (Can be extended)	Final Results	351.213(h)(1).
375 days	Ministerial error comments	351.224(c)(2).
380 days	Replies to ministerial error comments	351.224(c)(3).

[1] This assumes that the Department will send out the questionnaire within 45 days of the last day of the anniversary month.

Annex III.—Deadlines for Parties in Antidumping Investigations

Deadlines for Parties in Antidumping Investigations

Day	Event	Proposed regulation
Day 0	Date of Initiation[1]	
37 days	Application for an Administrative Protective Order	351.305(b)(3).
50 days[2]	Extension request for responses to questionnaires	351.301(c)(2)(iv).
50 days	Section A response	None.
54 days	Country-wide cost allegation	351.301(d)(2)(i)(A).
65 days	Section B and C responses	351.301(c)(2)(iii).
65 days	Section D and E response	See 351.301(c)(2)(ii).
77 days	Viability arguments	351.301(d)(1).
85 days	Company-specific cost allegations	351.301(d)(2)(i)(B).
115 days	Request for Postponement by Petitioner	351.205(e).
120 days	Allegation of critical circumstances	351.206(c)(2)(i).
140 days (Can be extended)	Preliminary Determination	351.205(b)(1).
150 days	Ministerial error comments	351.224(c)(2).
155 days	Replies to ministerial error comments	351.224(c)(3).
155 days	Submission of proposed suspension agreement	351.208(f)(1).
161 days[3]	Submission of information	351.301(b)(1).
177 days	Request for a hearing	351.310(c).
187 days	Submission of publicly available information to value factors (NME's).	351.301(c)(3).
194 days	Critical circumstance allegation	351.206(e).
197 days (Can be changed)	Closed hearing sessions	351.310(f).
197 days (Can be changed)	Submission of briefs	351.309(c)(i).
202 days	Submission of rebuttal briefs	351.309(9).
215 days	Request for postponement of the final determination	351.210(e).
215 days (Can be extended)	Final Determination	351.210.
225 days	Ministerial error comments	351.224(c)(2).
230 days	Replies to ministerial error comments	351.224(c)(3).
230 days	Request for exception from assessment of duties	351.211(d)(2).
267 days	Order issued	351.211(b).
282 days	Suspension agreement for regional industry	351.208(f)(1)(ii).

[1] All of the following references to days are keyed to the date of initiation.
[2] This assumes that the Department will send out the questionnaire within 5 days of the ITC vote.
[3] Assuming about 28 days between the preliminary determination and verification.

Annex IV.—Deadlines for Parties in Antidumping Administrative Reviews

Deadlines for Parties in Antidumping Administrative Reviews

Day	Event	Proposed Regulation
0 days[1]	Last Day of the Anniversary Month	Sec. 351.213(b).
30 days	Publication of Initiation	None.
37 days	Application for an Administrative Protective Order	351.305 (b)(3).
60 days	Request to Examine Absorption of Duties (AD)	351.213(j).
66 days	Extension request for responses to questionnaires	351.301(c)(2)(iv).
66 days	Section A response	None .
77 days	Country-wide cost allegation	351.301(d)(2)(i)(A).
82 days	Sections B and C response	351.301(c)(2)(iii).
82 days	Sections D and E response	None.
92 days	Viability arguments	351.301(d)(1).
102 days	Company-specific cost allegations	351.301(d)(2)(i)(B).
120 days	Withdrawal of Request for Review	351.213(d)(1).
170 days	Submission of information	351.301(b)(2).
245 days (Can be extended)	Preliminary Results	351.213(h)(1).
255 days	Ministerial error comments	351.224(c)(2).
260 days	Replies to ministerial error comments	351.224(c)(3).
272 days	Submission of publicly available information to value factors (NME's).	351.301(c)(3)(ii).
282 days	Request for a hearing	351.310(c).
282 days (Can be changed)	Closed hearing sessions	351.310(f).
282 days (Can be changed)	Submission of briefs	351.309(c)(1)(ii).
287 days	Submission of rebuttal briefs	351.309(d).

Day	Event	Proposed Regulation
365 days (Can be extended)	Final results	351.213(h)(1).
375 days	Ministerial error comments	351.224(c)(2).
380 days	Replies to ministerial error comments	351.224(c)(3).

[1] This assumes that the Department will send out the questionnaire within 45 days of the last day of the anniversary month.

Annex V.—Comparison of Prior and Proposed Regulations

COMPARISON OF PRIOR AND PROPOSED REGULATIONS

Prior	Proposed	Description
	PART 353—ANTIDUMPING DUTIES	
	Subpart A—Scope and Definitions	
353.1	351.101	Scope of regulations.
353.2	351.102	Definitions.
353.3	351.104	Record of proceedings.
353.4	351.105	Public, proprietary, privileged and classified.
353.5	Removed	Trade and Tariff Act of 1984 amendments.
353.6	351.106	*De minimis* weighted-average dumping margin.
	Subpart B—Antidumping Duty Procedures	
353.11	351.201	Self-initiation.
353.12	351.202	Petition requirements.
353.13	351.203	Determination of sufficiency of petition.
353.14	351.204(e)	Exclusion from antidumping duty order.
353.15	351.205	Preliminary determination.
353.16	351.206	Critical circumstances.
353.17	351.207	Termination of investigation.
353.18	351.208	Suspension of investigation.
353.19	351.209	Violation of suspension agreement.
353.20	351.210	Final determination.
353.21	351.211	Antidumping duty order.
353.21(c)	351.204(e)	Exclusion from antidumping duty order.
353.22(a)–(d)	351.213, 351.221	Administrative reviews under 751(a) of the Act.
353.22(e)	351.212(c)	Automatic assessment of duties.
353.22(f)	351.216, 351.221(c)(3)	Changed circumstances reviews.
353.22(g)	351.215, 351.221(c)(2)	Expedited antidumping review.
353.23	351.212(d)	Provisional measures deposit cap.
353.24	351.212(e)	Interest on overpayments and underpayments.
353.25	351.222	Revocation of orders; termination of suspended investigations.
353.26	351.402(f)	Reimbursement of duties.
353.27	351.223	Downstream product monitoring.
353.28	351.224	Correction of ministerial errors.
353.29	351.225	Scope rulings.
	Subpart C—Information and Argument	
353.31(a)–(c)	351.301	Time limits for submission of factual information.
353.31(a)(3)	351.302(d), 351.104(a)(2)	Return of untimely material.
353.31(b)(3)	351.302(c)	Request for extension of time.
353.31(d)–(i)	351.303	Filing, format, translation, service and certification.
353.32	351.304	Request for proprietary treatment of information.
353.33	351.104, 351.304(a)(2)	Information exempt from disclosure.
353.34	351.305, 351.306	Disclosure of information under protective order.
353.35	Removed	*Ex parte* meeting.
353.36	351.307	Verification.
353.37	351.308	Determinations on the basis of the facts available.
353.38(a)–(e)	351.309	Written argument.
353.38(f)	351.310	Hearings.
	Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value and Normal Value	
353.41	351.402	Calculation of export price.
353.42(a)	351.102	Fair value (definition).
353.42(b)	351.104(c)	Transactions and persons examined.
353.43	351.403(b)	Sales used in calculating normal value.
353.44	Removed	Sales at varying prices.
353.45	351.403	Transactions between affiliated parties.
353.46	351.404	Selection of home market as the basis for normal value.
353.47	Removed	Intermediate countries.
353.48	351.404	Basis for normal value if home market sales are inadequate.
353.49	351.404	Sales to a third country.
353.50	351.405, 351.407	Calculation of normal value based on constructed value.
353.51	351.406, 351.407	Sales at less than the cost of production.
353.52	351.408	Nonmarket economy countries.
353.53	Removed	Multinational corporations.

COMPARISON OF PRIOR AND PROPOSED REGULATIONS—Continued

Prior	Proposed	Description
353.54	351.401(b)	Claims for adjustments.
353.55	351.409	Differences in quantities.
353.56	351.410	Differences in circumstances of sale.
353.57	351.411	Differences in physical characteristics.
353.58	351.412	Levels of trade.
353.59(a)	351.413	Insignificant adjustments.
353.59(b)	351.414	Use of averaging.
353.60	351.415	Conversion of currency.
		PART 355—COUNTERVAILING DUTIES
		Subpart A—Scope and Definitions
355.1	351.001	Scope of regulations.
355.2	351.002	Definitions.
355.3	351.004	Record of proceeding.
355.4	351.005	Public, proprietary, privileged and classified.
355.5	351.003(a)	Subsidy library.
355.6	Removed	Trade and Tariff Act of 1984 amendments.
355.7	351.006	*De minimis* net subsidies.
		Subpart B—Countervailing Duty Procedures
355.11	351.101	Self-initiation.
355.12	351.102	Petition requirements.
355.13	351.103	Determination of sufficiency of petition.
355.14	351.104(e)	Exclusion from countervailing duty order.
355.15	351.105	Preliminary determination.
355.16	351.106	Critical circumstances.
355.17	351.107	Termination of investigation.
355.18	351.108	Suspension of investigation.
355.19	351.109	Violation of agreement.
355.20	351.110	Final determination.
355.21	351.111	Countervailing duty order.
355.21(c)	351.104(e)	Exclusion from countervailing duty order.
355.22(a)–(c)	351.113, 351.121	Administrative reviews under 751(a) of the Act.
355.22(d)	Removed	Calculation of individual rates.
355.22(e)	351.113(h)	Possible cancellation or revision of suspension agreements.
355.22(f)	Removed	Review of individual producer or exporter.
355.22(g)	351.112(c)	Automatic assessment of duties.
355.22(h)	351.116, 351.121(c)(3)	Changed circumstances review.
355.22(i)	351.120, 351.221(c)(7)	Review at the direction of the President.
355.23	351.112(d)	Provisional measures deposit cap.
355.24	351.112(e)	Interest on overpayments and underpayments.
355.25	351.112	Revocation of orders; termination of suspended investigations.
355.27	351.123	Downstream product monitoring.
355.28	351.124	Correction of ministerial errors.
355.29	351.125	Scope determinations.
		Subpart C—Information and Argument
355.31(a)–(c)	351.301	Time limits for submission of factual information.
355.31(a)(3)	351.302(d), 351.104(a)(2)	Return of untimely material.
355.31(b)(3)	351.302(c)	Request for extension of time.
355.31(d)–(i)	351.303	Filing, format, translation, service and certification.
355.32	351.304	Request for proprietary treatment of information.
355.33	351.104, 351.304(a)(2)	Information exempt from disclosure.
355.34	351.305, 351.306	Disclosure of information under protective order.
355.35	Removed	*Ex parte* meeting.
355.36	351.307	Verification.
355.37	351.308	Determinations on the basis of the facts available.
355.38(a)–(e)	351.309	Written argument.
355.38(f)	351.310	Hearings.
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		Subpart D—Quota Cheese Subsidy Determinations
355.41	Removed	Definition of subsidy.
355.42	351.601	Annual list and quarterly update.
355.43	351.602	Determination upon request.
355.44	351.603	Complaint of price-undercutting.
355.45	351.604	Access to information.

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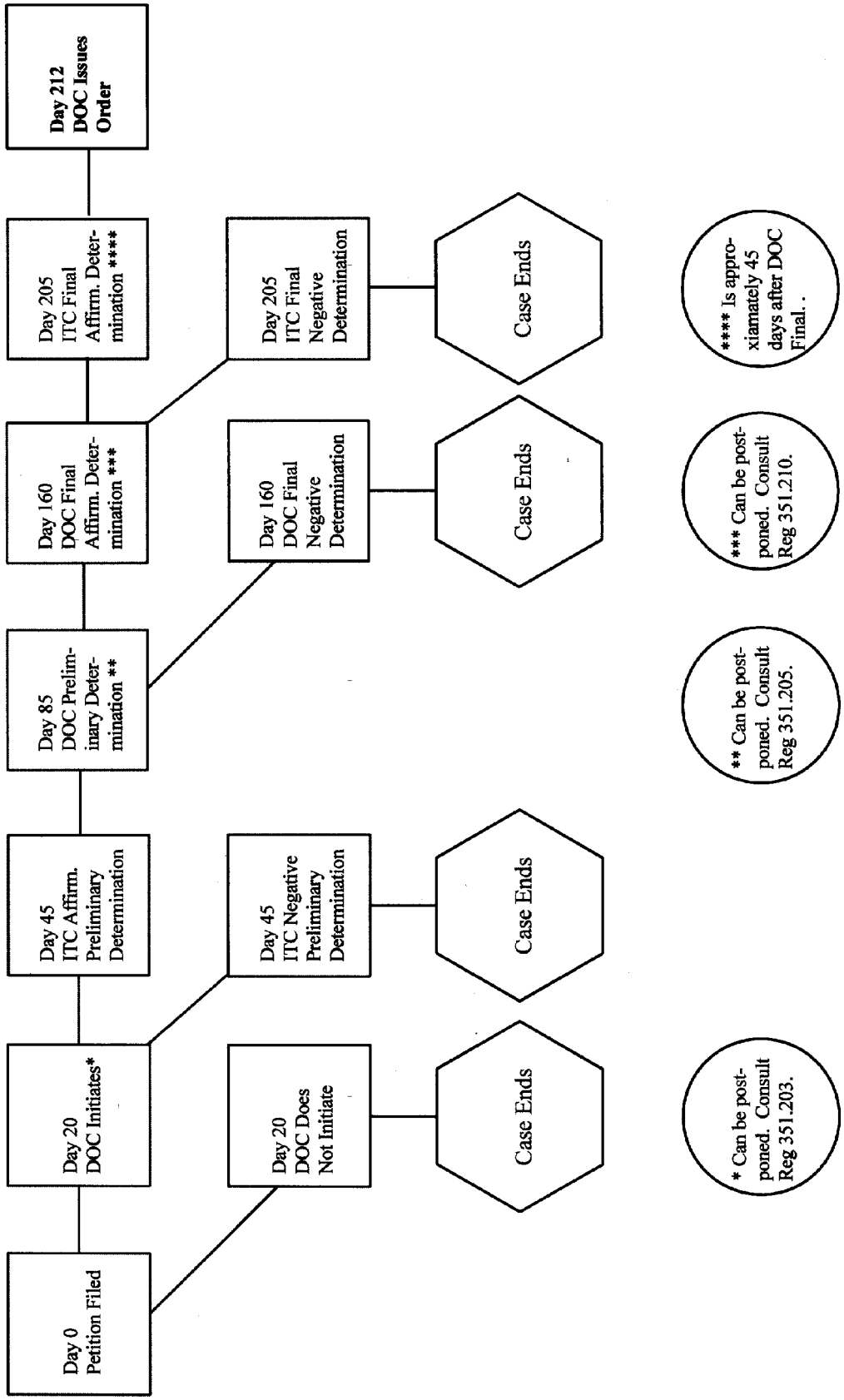
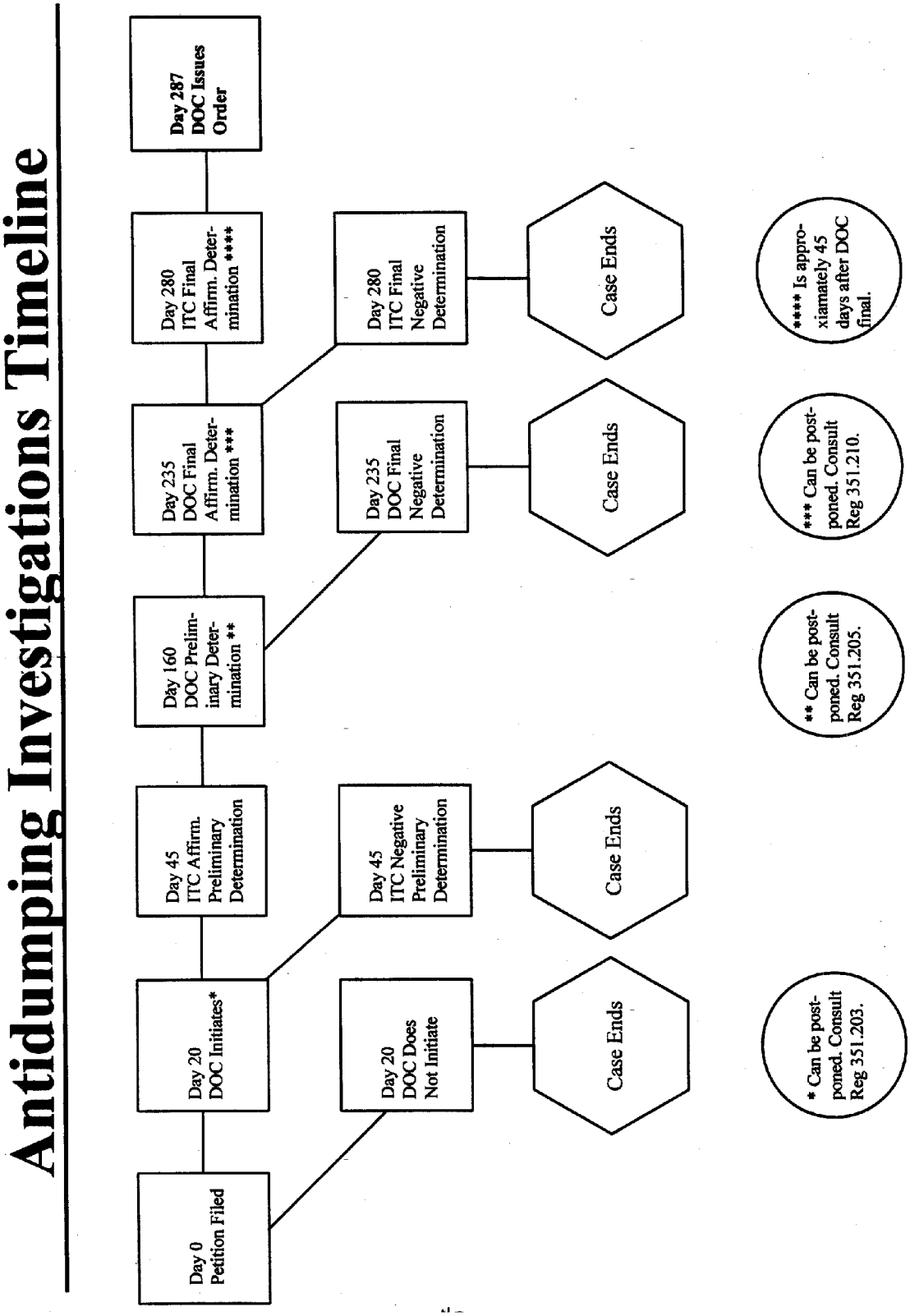
Annex VI.—Countervailing Investigations Timeline

Countervailing Investigations Timeline



Annex VII.—Antidumping Investigations Timeline



[FR Doc. 96–4024 Filed 2–26–96; 8:45 am]
BILLING CODE 3510–25–C

federal register

Tuesday
February 27, 1996

Part III

Department of Housing and Urban Development

Office of the Secretary

Notice of Regulatory Waiver Requests Granted; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–3864–N–05]

Notice of Regulatory Waiver Requests Granted

AGENCY: Office of the Secretary, HUD.

ACTION: Public Notice of the Granting of Regulatory Waivers. Request: July 1, 1995 through September 30, 1995.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), the Department (HUD) is required to make public all approval actions taken on waivers of regulations. This notice is the nineteenth such notice being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this notice is to comply with the requirements of section 106 of the Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this Notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone 202–708–3055; TDD: (202) 708–3259. (These are not toll-free numbers.) For information concerning a particular waiver action, about which public notice is provided in this document, contact the person whose name and address is set out, for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by the Department. Section 106 of the Act (Section 7(q)(3)) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q)(3), provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to *issue* the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that the Department has approved, by publishing a Notice in the Federal Register. These Notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purposes of today's document.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives Issued by HUD (56 FR 16337, April 22, 1991). This is the nineteenth Notice of its kind to be published under Section 106. It updates HUD's waiver-grant activity from July 1, 1995 through September 30, 1995. In approximately three months, the Department will publish a similar Notice, providing information about waiver-grant activity for the period from October 1, 1995 through December 31, 1995.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 24.200 (involving the waiver of a provision in Part 24) would come early in the sequence, while waivers in the Section 8 and Section 202 programs (24 CFR Chapter VIII) would be among the last matters listed. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in Title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 811.105(b) and § 811.107(a) would appear sequentially in the listing under § 811.105(b).) Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should the Department receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occur between October 1, 1995 through December 31, 1995.

Accordingly, information about approved waiver requests pertaining to regulations of the Department is provided in the Appendix that follows this Notice.

Dated: February 20, 1996.

Henry G. Cisneros,

Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development July 1, 1995 through September 30, 1995

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is:

Mr. James B. Mitchell, Director, Financial Services Division, U.S. Department of Housing and Urban Development, 470 L'Enfant Plaza East, Suite 3119, Washington, DC 20024, Phone: (202) 755–7450 x125

1. Regulation: 24 CFR Part 811 (1977) Sections 811.106(d) and 811.107(d).

Project/Activity: The Rocky Mount, North Carolina Housing Authority refunding of bonds which financed a Section 8 assisted project, Tessie Street Elderly Apartments, No. NC19–0004–001.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 26, 1995

Reasons Waived: The Part 811 regulations cited above prohibited refundings and restricted use of excess reserve balances to project purposes only. This refunding proposal was approved by HUD on September 6, 1995. Refunding bonds have been priced to an average yield of 6.28%. The 1979 Bond reserves will be used to help pay transactions costs. The tax-exempt refunding bond issue of $805,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 8% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

2. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Greater Kentucky Housing Assistance Corporation refunding of bonds which financed a Section 8 assisted project, Tug Fork Woods Apartments, FHA No. 083–35239.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: July 26, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 8, 1995. Refunding bonds have been priced to an average yield of 6.29%. The tax-exempt refunding bond issue of $2,535,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.5% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 9.45% to 6.7%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

3. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Ohio Capital Corporation for Housing refunding of bonds which financed four Section 8 assisted projects: Little Bark Manor, FHA No. 042–35344; Little Bark View, FHA No. 042–35345; Port Clinton, FHA No. 043–35238; and the McArthur Park Apartments, FHA No. 043–35238.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing—Federal Housing Commissioner.

Dated Granted: July 27, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on July 20, 1995. Refunding bonds have been priced to an average yield of 6.20%. The tax-exempt refunding bond issue of $6,045,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.23% at the call date with tax-exempt bonds yielding substantially less. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.52% to 6.5%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

4. Regulation: 24 CFR Sections 811.107(a)(2), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Gloucester County, New Jersey Housing Authority refunding of bonds which financed a Section 8 assisted project, New Sharon Woods Apartments, FHA No. 035–35086.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing—Federal Housing Commissioner.

Dated Granted: July 31, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on April 10, 1995. Refunding bonds have been priced to an average yield of 6.70%. The tax-exempt refunding bond issue of $2,720,892 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.8% to 7.3%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, providing $160,000 for project repairs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

5. Regulation: 24 CFR Part 811, Sections 811.106(b) and 811.107(d) of 1977 Regulations.

Project/Activity: City of Phoenix, Arizona refunding of bonds which financed two uninsured Section 8 assisted projects: Sunnyslope Manor and Fillmore Gardens.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing—FHA Commissioner.

Dated Granted: August 8, 1995.

Reasons Waived: The Part 811 regulations cited above prohibited refundings and required that excess reserve balances be used for project purposes. The issuer has requested HUD permission to release excess reserve balances from the 1978 and 1979 Trust Indentures for use in its housing assistance programs for low- and moderate-income families. Issuance of refunding bonds under Section 103 of the Tax Code will not reduce project debt service nor generate Section 8 savings. The City of Phoenix will execute a HUD Use Agreement to maintain low-income project occupancy for 5 years after expiration of Section 8 subsidies.

6. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Beaumont, Texas Housing Authority refunding of bonds which financed a Section 8 assisted project, Park Shadows Apartments, FHA No. 114–35308.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing—Federal Housing Commissioner.

Dated Granted: August 22, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 16, 1995. Refunding bonds have been priced to an average yield of 6.33%. The tax-exempt refunding bond issue of $4,130,000 at current low-interest rates will save Section 8 subsidy and provide $337,439 for project repairs. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.2% to 7.06%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

7. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Ohio Capital Corporation for Housing refunding of bonds

which financed a Section 8 assisted project, Stowe-Kent Gardens II Apartments, FHA No. 042–35381.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing—Federal Housing Commissioner.

Dated Granted: August 30, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 4, 1995. Refunding bonds have been priced to an average yield of 6.41%. The tax-exempt refunding bond issue of $3,285,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 11.82% to 6.9%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

8. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The North Wilkesboro, North Carolina Housing Authority refunding of bonds which financed a Section 8 assisted project, Wilkes Towers Apartments, FHA No. 053–35264.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 30, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on July 18, 1995. Refunding bonds have been priced to an average yield of 6.26%. The tax-exempt refunding bond issue of $2,170,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.4% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.69% to 6.25%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

9. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Ohio Capital Corporation for Housing refunding of bonds which financed a Section 8 assisted project, Lutheran Housing Services #1 Elderly Apartments, FHA No. 042–35250.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: August 30, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 8, 1995. Refunding bonds have been priced to an average yield of 6.38%. The tax-exempt refunding bond issue of $3,815,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.45% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.72% to 6.85%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

10. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Mercedes, Texas Housing Authority refunding of bonds which financed a Section 8 assisted project, Mercedes Palms Apartments, FHA No. 115–35217.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 7, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 3, 1995. Refunding bonds have been priced to an average yield of 6.57%. The tax-exempt refunding bond issue of $1,310,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.3% to 6.9%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

11. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Newport, Rhode Island Housing Authority refunding of bonds which financed a Section 8 assisted project, Broadway-West Broadway Apartments, FHA No. 016–35071.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 11, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 24, 1995. Refunding bonds have been priced to an average yield of 6.8%. The tax-exempt refunding bond issue of $7,125,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of

outstanding tax-exempt coupons of 12% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 7.05%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

12. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Ohio Capital Corporation for Housing refunding of bonds which financed a Section 8 assisted project, Horizon Apartments, FHA No. 043–35257.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 12, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 16, 1995. Refunding bonds have been priced to an average yield of 6.84%. The tax-exempt refunding bond issue of $5,400,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.2% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.5% to 6.75%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

13. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Elizabeth City Housing Development Corporation refunding of bonds which financed a Section 8 assisted project, Walnut West Apartments, FHA No. 053–35346.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 21, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on September 5, 1995. Refunding bonds have been priced to an average yield of 6.05%. The tax-exempt refunding bond issue of $1,075,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 7%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

14. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Winchester, Kentucky Housing Authority refunding of bonds which financed a Section 8 assisted project, Beverly P White Apartments, FHA No. 083–35304.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 21, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on June 29, 1995. Refunding bonds have been priced to an average yield of 6.55%. The tax-exempt refunding bond issue of $3,135,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.3% to 7.0%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

15. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Pike County, Kentucky Housing Authority refunding of bonds which financed a Section 8 assisted project, the Northfield Apartments, FHA No. 083–35377.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 26, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on September 18, 1995. Refunding bonds have been priced to an average yield of 6.35%. The tax-exempt refunding bond issue of $1,480,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 6.85%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

16. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Shelby, North Carolina Housing Development Corporation refunding of bonds which financed a Section 8 assisted project, Hickory Creek Apartments, FHA No. 053–35415.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 26, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also

agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on August 3, 1995. Refunding bonds have been priced to an average yield of 6.1%. The tax-exempt refunding bond issue of $1,165,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12.3% to 6.67%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

17. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: The Atlanta, Georgia Housing Authority refunding of bonds which financed a Section 8 assisted project, the Bedford Tower Apartments, FHA No. 061–35319.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 26, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on September 18, 1995. Refunding bonds have been priced to an average yield of 6.29%. The tax-exempt refunding bond issue of $4,435,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.3% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 9.66% to 4.65%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

18. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Ogden, Utah Housing Authority refunding of bonds which financed a Section 8 assisted project, St. Benedict's Manor, FHA No. 105–35063.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 27, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refunding bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on September 18, 1995. Refunding bonds have been priced to an average yield of 6.61%. The tax-exempt refunding bond issue of $3,380,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.25% at the call date in 1996 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 11.38% to 7.1%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

19. Regulation: 24 CFR Part 811 Sections 811.108(a)(2), 811.114(b), and 811.114(d).

Project/Activity: Southeast Texas HDC redemption of bonds which financed a Section 8 assisted project in 1979, the Stonegate Retirement Village Apartments, FHA No. 114–35252.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 27, 1995.

Reasons Waived: The Part 811 regulations cited above restrict uses of bond reserves and require HUD approval and reduction of Section 8 rents for prepayment of Section 11(b) bonds. The bonds will be redeemed by sale of the FHA mortgage note. Proceeds of the note sale will also finance project repairs of $333,750 as approved by HUD. No reduction in project debt service or contract rents will occur. The Treasury also gains long-term tax revenue benefits through prepayment of outstanding tax-exempt bonds. The refunding serves the important public purposes of improving Treasury tax revenues, (helping reduce the budget deficit), and assuring that the project is maintained in sound physical condition.

20. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), and 811.115(b).

Project/Activity: Atlanta Housing Authority refunding of bonds which financed four Section 8 assisted projects: Oakland City, FHA No. 061–35285; Capitol Towers, FHA No. 061–35282; Grant Park, FHA No. 061–35264; and Bedford Pines Apartments, FHA No. 061–35282.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 28, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. The refunding proposals were approved by HUD on September 13, 18, 21, and 22, 1995, in four project letters. Refunding bonds have been priced to average yields of 6.21%, 6.81%, and 6.87%. The tax-exempt refunding bond issues at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons at the call dates with tax-exempt bonds yielding substantially less. The refundings will also substantially reduce FHA mortgage interest rates at expiration of the HAP contracts, thus reducing FHA mortgage insurance risk. The refundings serve the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

21. Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), and 811.115(b).

Project/Activity: The Martin County, Kentucky Housing Development Corporation for Housing refunding of bonds which financed a Section 8 assisted project, Dempsey Towers Apartments, FHA No. 083–35278.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 28, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on

September 22, 1995. Refunding bonds have been priced to an average yield of 6.274%. The tax-exempt refunding bond issue of $5,730,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of between 9.625 and 10.10% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.32% to 5.80%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

22. Regulation: 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: The Harbor Court Development, Inc. of Haines City, Florida refunding of bonds which financed a Section 8 assisted project, Harbor Court Apartments, FHA No. 067–35260.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 28, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions under Section 103 of the Tax Code. This refunding proposal was approved by HUD on March 24, 1995. Refunding bonds have been priced to an average yield of 6.64%. The tax-exempt refunding bond issue of $1,375,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.5% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

23. Regulation: 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: The San Francisco RA refunding of bonds which financed a Section 8 assisted project, Northridge Cooperative Homes, FHA No. 121–35721.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 28, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions under Section 103 of the Tax Code. This refunding proposal was approved by HUD on September 18, 1994. Refunding bonds have been priced to an average yield of 6.81%. The tax-exempt refunding bond issue of $20,110,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 12% at the call date in 1995 with tax-exempt bonds at a substantially lower interest rate. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

24. Regulation: 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: County of Santa Clara, California refunding of bonds which financed a Section 8 assisted uninsured project, Villa Vasona Apartments, FHA No. 121–35786.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 28, 1995.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions under Section 103 of the Tax Code. This refunding proposal was approved by HUD on September 11, 1995. Refunding bonds have been priced to an average yield of 6.375%. The tax-exempt refunding bond issue of $4,205,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons ranging between 9.50 and 10.00% at the call date in 1996 with taxable to tax-exempt bonds at a substantially lower interest rate. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

Note to Reader: The person to be contacted for additional information about these waiver-grant items in this listing is:

Debbie Ann Wills, Field Management Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 451 7th Street, SW., Washington, DC 20410–7000, Telephone: (202) 708–2565.

25. Regulation: 24 CFR 92.219(b)(1).

Project/Activity: The State of Maryland requested a waiver of the match requirements cited at 24 CFR 92.219(b)(1).

Nature of Requirement: The regulations at 24 CFR 92.219 (b)(1) cite specific requirements for how match is determined in the HOME program.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 28, 1995.

Reasons Waived: It was determined that the proposed matching contribution, the State's Rental Allowance Program, was substantially equivalent to HOME match requirements and good cause was found to grant the waiver.

26. Regulation: 24 CFR 92.251(a) & 24 CFR 92.206(a)(2)(i).

Project/Activity: The State of Oklahoma requested a waiver, on behalf of Okfuskee County, to permit rehabilitation which utilizes HOME funds, to not bring a unit into compliance with HQS.

Nature of Requirement: 24 CFR 92.251(a) provides that housing assisted with HOME funds meet, at a minimum, HUD housing quality standards (HQS), and provides other minimum standards for substantial rehabilitation and new construction. 24 CFR 92.206(a)(2)(i) of the HOME regulations requires that properties rehabilitated with HOME Program funds minimally meet the housing quality standards at Section 882.109 of Title 24.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 18, 1995.

Reasons Waived: The waiver was granted because the State and the County had outlined their extensive efforts to complete the rehabilitation of a specific unit. The owner of the unit would not grant either entity access to the property to complete the rehabilitation. Therefore, it was determined that there was good cause to grant the waiver.

27. Regulation: 24 CFR 92.252(a)(2)(i).

Project/Activity: Mercer County a HOME recipient, on behalf of Lawrence Township New Jersey, requested a waiver of the HOME program regulations at 24 CFR 92.252(a)(2)(i) to permit Section 811 project rents, which exceed the low HOME rents, to prevail for a project partially assisted with HOME funds.

Nature of Requirement: The regulations at 24 CFR 92.252 (a)(2)(i) state, ''to obtain the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or participating jurisdiction multiplies the annual adjusted income of the tenant family by 30 percent and divides by 12, and if applicable, subtracts a monthly allowance for any utilities and services to be paid by the tenant.''

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 18, 1995.

Reasons Waived: The application of Section 92.252(a)(2)(i) of the HOME regulations for the Section 811 project would create an undue hardship for the Township because a handicapped housing project would not be developed in the jurisdiction, and thus adversely affect the purposes of the Housing and Community Development Act.

28. Regulation: 24 CFR 92.254(a)(3).

Project/Activity: The Kentucky Housing Authority requested a waiver of 24 CFR

92.254(a)(3) of the HOME regulations to increase the rental period from three to five years.

Nature of Requirement: 24 CFR 92.254(a)(3) which requires a home to be purchased within 36 months if a lease-purchase agreement is used in conjunction with a homebuyer program.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: September 6, 1995.

Reasons Waived: HUD determined that increasing the rental period in this case from three to five years will provide tenants the necessary time to succeed in the required life skills program and become responsible and reliable homeowners.

29. Regulation: 24 CFR 92.258.

Project/Activity: The State of North Dakota requested a waiver of 24 CFR 92.258 of the HOME regulations to waive the 30 year affordability period for low-income homebuyers receiving HOME assistance.

Nature of Requirement: 24 CFR 92.258 provides a limitation on the use of HOME funds with FHA mortgage insurance for a period of time equal to the term of the HUD insured mortgage.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 28, 1995.

Reasons Waived: The application of Section 92.258 of the HOME regulations to the State's program would create an undue hardship for North Dakota and its potential homeowners, and adversely affect the purposes of the Act.

30. Regulation: 24 CFR 92.258.

Project/Activity: Suffolk County, New York requested a waiver of 24 CFR 92.258 of the HOME regulations to waive the 30 year affordability period for low-income homebuyers receiving HOME assistance.

Nature of Requirement: 24 CFR 92.258 provides a limitation on the use of HOME funds with FHA mortgage insurance for a period of time equal to the term of the HUD insured mortgage.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: September 6, 1995.

Reasons Waived: The application of Section 92.258 of the HOME regulations to the county program would create an undue hardship for Suffolk County and its potential homeowners, and adversely affect the purposes of the Act.

31. Regulation: 24 CFR 291.400.

Project/Activity: The Anoka County Community Action Program requested a waiver of the 24 month residency for a tenant in a single family property leased under the single family property disposition homeless program.

Nature of Requirement: The regulations at 24 CFR 291.400 prohibit a non-profit organization or a community participating in the Single Family Property Disposition Leasing Program from extending a lease to the same tenant for a period beyond 24 months.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 16, 1995.

Reasons Waived: The waiver will allow a formerly homeless family more time to find permanent housing.

32. Regulation: 24 CFR 291.400.

Project/Activity: The Anoka County Community Action Program requested a waiver of the 24 month residency for three tenants in single family properties leased under the single family property disposition homeless program.

Nature of Requirement: The regulations at 24 CFR 291.400 prohibit a non-profit organization or a community participating in the Single Family Property Disposition Leasing Program from extending a lease to the same tenant for a period beyond 24 months.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: September 6, 1995.

Reasons Waived: The waiver will allow three formerly homeless families more time to find permanent housing.

33. Regulation: 24 CFR 511.76(h).

Project/Activity: The City Salisbury, North Carolina requested a waiver of program closeout requirements of the Rental Rehabilitation program.

Nature of Requirement: The regulations at 24 CFR 511.76(h) cite when proceeds received from Rental Rehabilitation loans become program income.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 3, 1995.

Reasons Waived: The North Carolina Housing Finance Agency (NCHFA), the Rental Rehabilitation grantee, had not yet met the requirements for program closeout. However, the City of Salisbury, as a subrecipient of the State, had closed out all of its RRP grants and was receiving program income from them. The waiver allowed the City to use its program income to provide affordable rental housing to low income residents.

34. Regulation: 24 CFR 570.200(h) & 570.200 (a)(5).

Project/Activity: The City of San Angelo, Texas requested a waiver of 24 CFR 570.200(h) & 570.200(a)(5) regarding reimbursement of pre-agreement costs for the renovation of a building to be used as a one-stop public health facility.

Nature of Requirement: Under the regulations a locality is precluded from obligating CDBG funds before grant award.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 28, 1995.

Reasons Waived: HUD determined that failure to grant the waiver would cause hardship and adversely affect the purposes of the Act. The waiver of the limitations on pre-agreement costs at 24 CFR 570.200(h) & 570.200(a)(5) will permit the renovation of the building which will be used for a public health facility.

35. Regulation: 24 CFR 570.200(h) & 570.200(a)(5), 24 CFR 570.207(b)(4).

Project/Activity: The City of Albany Georgia requested a waiver of 24 CFR 570.200(h) & 570.200(a)(5) to facilitate the obligation of disaster recovery funds by permitting the City to reimburse real property owners for expenses incurred on or after the disaster date. The City of Albany Georgia also requested a waiver of 24 CFR 570.207(b)(4) to permit it to carry out a household assistance program for victims of the disaster.

Nature of Requirement: Under the regulations a locality is precluded from obligating CDBG funds before grant award. Also at 24 CFR 570.207(b)(4) prohibit income payments to households or individuals.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 31, 1995.

Reasons Waived: HUD determined that failure to grant the waiver would cause hardship and adversely affect the purposes of the Act. The waiver of the limitations on pre-agreement costs at 24 CFR 570.200(h) & 570.200(a)(5) will permit the City to implement a plan to reimburse property owners for expenses incurred prior to the effective date of its CDBG emergency supplemental grant. The second waiver will allow a household assistance program for those suffering personal property damage caused by the Tropical Storm Alberto.

36. Regulation: 24 CFR 570.200(h) & 570.200(a)(5).

Project/Activity: The City of Davenport, Iowa requested a waiver of 24 CFR 570.200(h) & 570.200(a)(5) regarding reimbursement of pre-agreement costs to permit the City to complete an acquisition activity.

Nature of Requirement: Under the regulations a locality is precluded from obligating CDBG funds before grant award.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 18, 1995.

Reasons Waived: HUD determined that failure to grant the waiver would cause hardship and adversely affect the purposes of the Act. The waiver of the limitations on pre-agreement costs at 24 CFR 570.200(h) & 570.200(a)(5) will permit the city to fund the acquisition, by a non-profit organization, of a youth center to serve local youth and function as a community policing outpost, with FY 1996, FY 1997 and FY 1998 CDBG funds.

37. Regulation: 24 CFR 570.200(h) & 570.200(a)(5).

Project/Activity: Sacramento, California requested a waiver of 24 CFR 570.200(h) & 570.200(a)(5) regarding reimbursement of pre-agreement costs to permit the City to carry out street improvements in a low and moderate income area in one year in instead of in two phases.

Nature of Requirement: Under the regulations a locality is precluded from obligating CDBG funds before grant award.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: September 6, 1995.

Reasons Waived: HUD determined that failure to grant the waiver would cause hardship and adversely affect the purposes of the Act. The waiver of the limitations on pre-

agreement costs at 24 CFR 570.200(h) & 570.200(a)(5) will permit the reimbursement of local funds, for street improvements to a low and moderate income area, with FY 1996 and FY 1997 CDBG funds.

38. Regulation: 24 CFR 570.200(h) & 570.200(a)(5).

Project/Activity: Clark County, Nevada requested a waiver of 24 CFR 570.200(h) & 570.200(a)(5) regarding reimbursement of pre-agreement costs for the development of a public facility to provide recreational facilities for at-risk youth.

Nature of Requirement: Under the regulations a locality is precluded from obligating CDBG funds before grant award.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: September 18, 1995.

Reasons Waived: HUD determined that failure to grant the waiver would cause hardship and adversely affect the purposes of the Act. The waiver of the limitations on pre-agreement costs at 24 CFR 570.200 (h) & 570.200(a)(5) will permit the City to develop a facility that will provide recreational programs to neighborhood youth. In addition, the Police Department has a neighborhood office there as do various county social service agencies.

39. Regulation: 24 CFR 576.21.

Project/Activity: The State of Michigan requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

Nature of Requirement: The State requested a waiver of the expenditure limitation of ESG funds on essential services.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 10, 1995.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee ''demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources''. The State demonstrated that other eligible activities will be carried out with other funds.

40. Regulation: 24 CFR 576.21.

Project/Activity: Monmouth County, New Jersey requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

Nature of Requirement: The County requested a waiver of the expenditure limitation of ESG funds on essential services.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 10, 1995.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee ''demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources.'' The County provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

41. Regulation: 24 CFR 576.21.

Project/Activity: The municipality of Caguas, Puerto Rico requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

Nature of Requirement: The municipality requested a waiver of the ESG expenditure limitation on essential services.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 10, 1995.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee ''demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources''. The municipality provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

42. Regulation: 24 CFR 576.21.

Project/Activity: The State of Massachusetts requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

Nature of Requirement: The State requested a waiver of the ESG expenditure limitation on essential services.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 21, 1995.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee ''demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources''. The State provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

43. Regulation: 24 CFR 576.21.

Project/Activity: Mt. Vernon City, New York requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

Nature of Requirement: The City requested a waiver of the ESG expenditure limitation on essential services.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 28, 1995.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 percent cap on essential services may be waived if the grantee ''demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources''. The City provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

44. Regulation: 24 CFR 576.21.

Project/Activity: The City of Ft. Wayne, Indiana requested a waiver of the Emergency Shelter Grants regulations at 24 CFR 576.21.

Nature of Requirement: The City requested a waiver of the ESG expenditure limitation on essential services.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: September 6, 1995.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 cap percent cap on essential services may be waived if the grantee ''demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources''. The City provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

45. Regulation: 24 CFR 578.335(e).

Project/Activity: The State of California on behalf of the California Department of Housing and Community Development requested a waiver of 24 CFR 578.335(e) of the conflict of interest regulations to allow two board members on a homeless advisory board to perform work for a permanent housing project.

Nature of Requirement: 24 CFR 578.335(e) provides the regulations on conflict of interest for program participants.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 14, 1995.

Reasons Waived: A determination was made that undue hardship would result from applying the requirement and would adversely affect the purposes of the permanent housing for the handicapped homeless program.

46. Regulation: 24 CFR 582.803(a)(i).

Project/Activity: The Fort Collins Housing Authority requested a waiver to accept as residents, three persons who were assisted under the Section 8 Certificate program, into a 12 unit SRO projects.

Nature of Requirement: The regulations at 24 CFR 882.803(a)(i) state that housing is not eligible for SRO assistance if it is, or has been within 12 months before the owner submits a proposal to the public housing agency, (PHA), subsidized under any Federal Housing program.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: September 6, 1995.

Reasons Waived: It was determined that the financially feasibility of the project was based on twelve units receiving rental assistance. The Assistant Secretary determined that granting the waiver was the most effective way of developing the project.

47. Regulation: 24 CFR 882.408(b).

Project/Activity: The Housing Authority of the City of San Francisco requested a waiver which would allow the Housing Authority to utilize a gross rent for one of its Shelter Plus Care projects that would exceed the applicable Fair Market Rent (FMR) by 12 percent.

Nature of Requirement: The SRO regulations at 24 CFR 882.408(b) state that, a public housing agency may approve initial gross rents which exceed the applicable FMR by up to 10 percent for all units of a given size in specified areas. The Department is waiving the provisions of 24 CFR 882.408(b) which only allow pre-agreement exception rents to be approved on an area-wide basis and which only allow the exception rent to exceed the moderate rehabilitation FMR by 10 percent.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 28, 1995.

Reasons Waived: It was determined that the City had taken all reasonable actions to reduce the gross rents to within the applicable FMR. So in order for project development to proceed the gross rent was increased beyond the FMR by 12 percent.

48. Regulation: 24 CFR 882.808(a)(3)(4) &(b)(2).

Project/Activity: The Housing Authority of Portland Oregon requested a waiver which would allow the owners of four SRO structures to maintain separate waiting lists rather than receive tenant referrals from the Housing Authority's waiting list for SRO projects.

Nature of Requirement: The SRO regulations at 24 CFR 882.808(a)(3)(4) &(b)(2) state that, a public housing agency waiting list must be used for tenant referrals to SRO projects.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: July 20, 1995.

Reasons Waived: The March 15, 1993, Interim Rule for the SRO program stated that the PHA waiting list requirement was being eliminated. Due to a technical error this new policy was not implemented. Since the Department plans on publishing a technical amendment which includes this policy, the waiver was granted.

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is:

Mary Ann Russ, Deputy Assistant Secretary for Public and Assisted Housing Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1380

49. Regulation: 24 CFR 990.108(e).

Project/Activity: Cuyahoga Metropolitan Housing Authority. A request was made to prevent a loss of operating subsidy when converting efficiency units to one bedroom units.

Nature of Requirement: When unit months are lost through combining small units into larger units they must be removed from the calculation of unit months available in the PFS subsidy calculation.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: October 4, 1995.

Reason Waived: Because of problems the HA has experienced filling vacant efficiency units for the elderly the HA converted them to one bedroom units which it could rent. In order to support the HAs efforts to reduce vacancies, approval was granted for the HA to include the number of unit months which would be lost through this conversion in future PFS calculations.

50. Regulation: 24 CFR 990.109(b)(3)(iv).

Project/Activity: Breckenridge, MN, Housing and Redevelopment Authority. A request was made to use the HAs actual occupancy rate of 94% and recalculate its operating subsidy eligibility.

Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan to use a projected occupancy percentage of 97%.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: September 22, 1995.

Reason Waived: The HA was allowed to use its actual occupancy percentage to prevent undue hardships while it continues its efforts to reduce vacancies.

51. Regulation: 24 CFR 990.109(b)(3)(iv).

Project/Activity: Chicago Housing Authority. A request was made to use 80% for the HA's projected occupancy percentage when calculating its PFS operating subsidy eligibility.

Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97%.

Granted By: Michael B. Janis, General Deputy Assistant Secretary.

Date Granted: September 26, 1995.

Reason Waived: As acknowledged in the five-year Memorandum of Agreement (MOA) between HUD and the HA the key to achieving any of the vacancy reduction performance targets is the approval of the waiver. In order to be supportive of the MOA the HA was authorized to use 80% as the projected occupancy percentage.

[FR Doc. 96–4316 Filed 2–26–96; 8:45 am]

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federal register

Tuesday
February 27, 1996

Part IV

Environmental Protection Agency

40 CFR Part 125

Modification of Secondary Treatment Requirements for Discharges Into Marine Waters; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 125

[FRL–5428–9]

RIN 2040–AC72

Modification of Secondary Treatment Requirements for Discharges Into Marine Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing an amendment to the regulations contained at 40 CFR Part 125, Subpart G, which implement section 301(h) of the Clean Water Act (''CWA'' or ''Act''), 33 U.S.C. 1311(h). Section 301(h) provides for modifications of secondary treatment requirements for discharges into marine waters by publicly owned treatment works (POTWs) that demonstrate their compliance with the 301(h) criteria. As required by statutory amendments, a provision was added to the 301(h) regulations in 1994 that requires 301(h) POTWs to show they are removing a minimum of 30 percent of the biological oxygen demanding material (BOD) from their influent. Under the rule, compliance with the 30-percent removal requirement of BOD was generally to be achieved on a monthly-average basis. The rule did, however, allow some applicants, subject to an eligibility provision, to request that they be allowed to average their BOD removal percentages over a longer than monthly period. The eligibility provision excluded facilities that had demonstrated an ability to achieve 30-percent BOD removal on a monthly-average basis over the calendar year prior to August 9, 1994. Today's proposal would amend 40 CFR 125.60(c)(1) to provide increased flexibility by removing the eligibility provision, thereby allowing any 301(h) POTWs to apply for a longer than monthly BOD averaging period. The remaining provisions of the 301(h) regulations remain in full force and effect, and are not the subject of this proposed rule.

DATES: Comments on this proposed amendment must be submitted by March 28, 1996.

ADDRESSES: Comments on this proposed amendment should be addressed to: Virginia Fox-Norse, Oceans and Coastal Protection Division (4504F), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; (202) 260–8448. The official record for this rulemaking is available for viewing at EPA's Water Docket; Room L–102, 401 M Street, SW, Washington, DC 20460. For access to the Docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m., Monday through Friday, excluding legal holidays, for an appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Virginia Fox-Norse, Office of Wetlands, Oceans and Watersheds, Oceans and Coastal Protection Division (4504F), U.S. Environmental Protection Agency, 401 M St., SW, Washington, D.C. 20460; (202) 260–8448.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Background
A. Water Quality Act Amendments of 1987
B. Final Rulemaking of 1994
C. Legal Challenge to Regulations
II. Today's Proposal
III. Discussion of Alternatives
IV. Supporting Documentation

I. Background

A. Water Quality Act Amendments of 1987

On February 4, 1987, Congress passed the Water Quality Act of 1987 (WQA) (Pub. L. 100–4), which amended CWA section 301(h) in several important respects. Among other things, the WQA added a new section 301(h)(9), the provision relevant to this rulemaking. Section 301(h)(9) requires that ''* * * at the time the 301(h) modification becomes effective, the applicant will be discharging effluent which has received at least primary or equivalent treatment * * *.'' Section 301(h)(9) also defined primary or equivalent treatment as ''treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biochemical oxygen demanding material (BOD) and of the suspended solids (SS) in the treatment works influent, and disinfection, where appropriate.''

B. Final Rulemaking of 1994

EPA published the final regulations implementing the WQA amendments to section 301(h) on August 9, 1994 (59 FR 40642). That rulemaking added provisions in 40 CFR 125.60 regarding, among other things, the statutory requirement for a minimum of primary or equivalent treatment. Under the proposed regulations (January 24, 1991, 56 FR 2814) applicants would have had to demonstrate compliance with the 30 percent BOD removal requirement using a monthly averaging period for calculating compliance. However, a number of commenters indicated that the 30 percent removal rate for BOD may be difficult to achieve on a monthly average basis in certain cases. In response, in the August 1994 final rule, EPA added § 125.60(c) to provide flexibility to POTWs, in certain specified circumstances, to use up to a yearly averaging period to calculate compliance with the 30-percent removal requirements for BOD. The flexibility is only for the averaging period used to calculate compliance. The rule still requires all applicants to meet the statutory 30-percent removal requirement for BOD. As discussed in the preamble to the final regulations (59 FR 40648–40649), EPA believed that the monthly averaging period would still be appropriate for most applicants.

Under the second sentence of § 125.60(c)(1), facilities that had demonstrated an ability to achieve 30 percent removal of BOD on a monthly average basis over the calendar year prior to August 9, 1994, (the date the rule was published) were excluded from eligibility to apply for this longer than monthly averaging period. Specifically, this sentence (the ''eligibility provision'') states:

> If, however, the applicant has demonstrated an ability to achieve 30 percent removal of BOD on a monthly average basis over the calendar year prior to August 9, 1994, the applicant shall not be eligible for an averaging basis other than monthly.

This provision was based on the assumption that facilities that had consistently achieved 30 percent removal of BOD on a monthly average basis would continue to be capable of achieving the 30 percent performance standard on a monthly basis.

C. Legal Challenge to Regulations

In December 1994, four Alaskan municipalities filed a petition for review in the U.S. Court of Appeals for the Ninth Circuit challenging, in particular, the above-described limitation on eligibility for applying for a longer than monthly averaging period to calculate compliance with the 30-percent removal requirement for BOD. [*Anchorage Water & Wastewater Utility, et al,* v. *U.S. EPA*, No. 94–70913 (9th Cir.)] Petitioners claim that all POTWs should be eligible at least to *apply* for alternative averaging periods for removal of BOD. Because the issues raised by these parties concern the eligibility provision—which EPA added at the time of the final rule in response to public comments on the proposal—they are arising now for the first time.

The petitioners believe the eligibility provision is unwarranted and inappropriate because there may be

cases in which a POTW may have met the 30-percent removal requirement for the preceding year, but may not be able to meet it on a monthly basis in the future for reasons beyond their control.

II. Today's Proposal

EPA has considered the issues raised by the Alaskan municipalities. In response, EPA agrees that the absolute bar represented by the eligibility provision is unnecessary and could be too inflexible. Therefore, EPA today proposes to delete the eligibility provision (i.e., the second sentence of 125.60(c)(1)). This proposal would not change the showing that POTWs must make to have the longer than monthly averaging period approved, and EPA continues to expect that situations where the longer averaging period is shown to be justified will be the exception rather than the rule.

The Agency emphasizes that removing the eligibility provision would not automatically provide any POTW with a longer averaging period for determining compliance with the 30-percent removal requirement for BOD. Instead, it simply allows all POTWs to *request* a longer averaging period. Under the regulations, POTWs who make such a request will continue to be required to demonstrate to the satisfaction of the Regional Administrator that a longer period is warranted in order to be granted relief from the requirement to meet BOD removal on a monthly basis. In determining whether to grant a POTW's request for longer than monthly averaging under § 125.60(c)(2)(iii), the Regional Administrator will still consider the POTW's historical removal data as a relevant factor. EPA also notes that if it grants a longer averaging period, the required frequency of monitoring for BOD will remain the same as if the period for calculating compliance for BOD removal was the monthly average basis.

As noted above, all POTWs remain subject to the statutorily required 30 percent BOD removal condition, and all POTWs that want a longer than monthly averaging period will need to make a showing to the Regional Administrator that a longer period is warranted, and actual monitoring frequencies for BOD will not change. These safeguards, coupled with the continued requirement that the discharge must meet all the other 301(h) environmental criteria, lead EPA to believe that the level of environmental protection would not be changed by this proposal in any material way, and the flexibility provided is appropriate.

III. Discussion of Alternatives

The Agency considered other alternatives for providing relief from the strict bar on requesting a longer averaging period represented by the eligibility provision, such as: (1) deleting the eligibility provision of § 125.60(c)(1) and restricting the factors in the Regional Administrator's determination to grant or deny the longer averaging period; (2) retaining the eligibility provision, but adding a provision that allows an applicant that achieved 30-percent removal of BOD on a monthly average basis over the year preceding August 9, 1994, to satisfy the Regional Administrator that the data did not reflect representative conditions; and (3) retaining a modified eligibility provision that would be based on the BOD removal rates achieved over longer than one year preceding August 9, 1994, *e.g.*, 2 years, to account for a range of conditions.

EPA rejected these alternatives because simply eliminating the eligibility provision in § 125.60(c)(1) best provided the necessary flexibility while still providing adequate environmental safeguards. EPA believes that removing the eligibility provision while still making past monitoring performance a relevant factor in determining a longer than monthly averaging period, will not result in any decrease in environmental protection. Deleting this provision will form the basis for a settlement of the legal challenge brought by the Alaskan municipalities. EPA also proposes to delete a parallel clause in § 125.60(c)(2), as a conforming change.

Nevertheless, the Agency requests comments on all aspects of today's proposal, including whether any of these alternatives or other alternatives not discussed here, including not changing the eligibility provision, would be a more appropriate course of action on this issue. EPA will consider adopting any of the above alternatives or others that are advocated in any public comments.

IV. Supporting Documentation

Analyses under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

Because today's action simply proposes to remove provisions of an existing rule from the CFR that limit the ability of affected POTWs to request flexibility in calculating compliance with removal requirements for BOD, this action has no regulatory impact and is not a ''significant'' regulatory action within the meaning of E.O. 12866, and is therefore not subject to OMB review.

This action also does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. For the same reasons, pursuant to the Regulatory Flexibility Act, I certify that this action would not have a significant economic impact on a substantial number of small entities. Finally, deletion of these provisions from the CFR does not affect requirements under the Paperwork Reduction Act.

List of Subjects in 40 CFR Part 125

Environmental protection, Marine point source discharges, Reporting and recordkeeping, Waste treatment and disposal, Water pollution control.

Dated: February 15, 1996.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 125, subpart G as follows:

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 125 continues to read as follows:

Authority: Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*, unless otherwise noted.

Subpart G—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

2. Section 125.60 is proposed to be amended by removing paragraph (c)(1); by redesignating paragraphs (c)(2) as (c)(1) and (c)(3) as (c)(2); and by revising the introductory text of newly designated paragraph (c)(1) to read as follows:

§ 125.60 Primary or equivalent treatment requirements.

* * * * *

(c)(1) An applicant may request that the demonstration of compliance with the requirement under paragraph (b) of this section to provide 30 percent removal of BOD be allowed on an averaging basis different from monthly (e.g., quarterly), subject to the demonstrations provided in paragraphs (c)(1)(i), (ii) and (iii) of this section. The Administrator may approve such

requests if the applicant demonstrates to the Administrator's satisfaction that:

* * * * *

[FR Doc. 96–4387 Filed 2–26–96; 8:45 am]

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Air quality implementation plans; approval and promulgation; various States:

Michigan; published 2-27-96

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Chloroethane; modification; withdrawn; published 2-27-96

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Immigrant petitions--

Children of widows or widowers; published 2-27-96

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Idaho; comments due by 3-4-96; published 2-1-96

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Rural Utilities Service

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RUS borrowers; audit policy and certified public accountant requirements; comments due by 3-4-96; published 1-3-96

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Export Administration Bureau

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National Oceanic and Atmospheric Administration

Fishery conservation and management:

Gulf of Mexico reef fish; comments due by 3-8-96; published 2-9-96

Pacific Coast groundfish; comments due by 3-8-96; published 1-23-96

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National Defense Authorization Act; implementation; comments due by 3-4-96; published 1-4-96

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Gasoline spark-ignition and diesel compression-ignition marine engines; emission standards; comments due by 3-8-96; published 2-7-96

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